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**1961**

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**VOLUME II**

**JULY-DECEMBER**

*(Pages 1-20)*



#### Errors

On page 51, in the second paragraph add the word "C" between the words "And" and "I" in the third paragraph read "Make" for "Make" and delete the words "therein," "printed on the margin."

On page 51, in the third line of fourth paragraph read "is" for the word "is" printed between the words "dream" and "to all".

JUDGES OF THE HIGH COURT OF JUDICATURE  
AT ALLAHABAD

1961

*Chief Justice*

The Hon'ble M. C. DIXIT

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The Honourable Mr. Justice J. K. TANDON

(Retired on 2-1-55)

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The Honourable Mr. Justice RAM ANAND MISHRA

The Honourable Mr. Justice K. P. MATHUR

The Honourable Mr. Justice J. D. SHARMA

The Honourable Mr. Justice VIDYAN LAL



( 4 )

The Honourable Mr Justice T. RAMASWAMI

The Honourable Mr Justice S. D. SEN

(That he was on 24/5/52)

The Honourable Mr Justice S. C. MANDAL

(That he was on 24/5/52)

The Honourable Mr Justice B. L. GUPTA

The Honourable Mr Justice BHAGWAN DAS GUPTA

(That he was on 24/5/52)

The Honourable Mr Justice K. B. ANTHAS

(That he was on 24/5/52)

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Where there is no standard prescribed for any article of food or in the duty of the dealer to fix or determine the same	
Although the law has prescribed a standard for cow and buffalo milk, adulteration, there is no such standard for a mixture of the two which a proportion of the two in the mixture is known, the prescribed standard for the mixture may be worked out by a simple arithmetical calculation. Even where the provision is not laid it is easy to provide a standard adulteration in various cases, eg. where the quantity of milk for or from them	



which is less than the maximum, provided the error with a maximum  $\mu$  is not only be the result of imprecision.

It is thus the public, and not directly understood the scope of his duty and reached himself in what he wishes to. The public interest should care to his opinion, namely the result of his analysis, and leave it to the Court to determine what is the prescribed standard for the particular grade of food and whether the quality in parts of the sample falls below the prescribed standard, and then if he can determine the quantity of water in the sample without determining the quantity of solids he should state the quantity of water already found in the sample, leaving it to the Court to determine how much of it is to be added water.

The second offence (punishable under s. 10(1)(b) of the Act) being liable to the maximum sentence of one year, suggests itself almost by itself as a warning case. The trial of such offences according to the procedure for summary case is illegal but possible under s. 101 of the Code of Criminal Procedure (except when procedure has been issued in and abolished on behalf of the accused).

From this it may

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**Appeal to Supreme Court—Order is remitted for the same legal advice before it is not fit for appeal.—***Conservation of Forests, 1914 Article 11(1)(b)—Code of Civil Procedure, 1908 s. 100(1)(b)*

An order of remission for a *de novo* trial is not a judgment, decree or final order within the meaning of Article 135 of the Constitution and is, therefore, unappealable to the Supreme Court. The consequence for the *Reserve of the Forests* (Section 1, 191 of the Code of Civil Procedure) and Article 135 of the Constitution was removed by the Civil Procedure Code (inserted into Act 1908). But even before the Amendment Act, the jurisdiction under the Code being expressly made inoperative, it does not follow that the principle was in effect the same.

The observations of the High Court as a point remained for record which would not be binding on the *de novo* trial cannot be said to state a question of law of great public importance so as to justify a certificate of fitness for appeal to Supreme Court under Article 135(2) of the Constitution.

High Court's certificate of fitness for appeal to Supreme Court, valid and appeal dismissed.

*Money, Judgment and Note v. State of Karnataka*  
(1948)

7

**Appeal to Supreme Court.** From an order dismissing petition for writs and mandamus—*Conservation of Forests* (appeal)



on game, the original certificate under it for the same is *good*, more, final order or sentence of execution passed in relation to it by the High Court.

State of Texas Statute: (page)

**Arbitration Act, 1889, s. 3 and 18, Para 14, s. 3.—Reference of dispute for decision by arbitrator.—Time within which award is to be made.—Composition of**

**Arbitration—Reference of, dispute for decision by.—Time within which award may be filed.—Composition of.—Arbitration Act, 1889, s. 3 and 18, Para 14, s. 3.**

Rule 3 of the First Schedule to the Arbitration Act, by virtue of s. 3 and in the absence of a different intention expressed in the arbitration agreement, keeps the time within which the award must be made by the arbitrator.

For *arbitrator*—The second definition, viz. "The arbitrator shall make these award within four months."

After having been called upon to act he begins to receive by law, partly to the arbitrator agreement "can be divided" in a conclusion arrived at by law goes to the arbitrator. Such a notice may be given to arbitrator. They entered on the reference, in *any* case that has within four months from the date they entered on the reference. The period of four months would in the future be computed from the date of entering on the reference and, in the time from the date of notice to act. A notice to act need, obviously be given only when an arbitrator is not acting. He has refused or neglected to do things for days. The court has no error. (18) The power to extend the time runs through the award has been already made beyond the prescribed date.

(For *Section 3*)—The period of four months in question is to run from the date of the arbitrator accepting the reference or from the date of the notice to act. It does not constitute of a notice on the arbitrator to act when they enter into the reference and the period of four months cannot be computed from or extended to such notice.

See *Section 14* s. 14, Statute No. 1

**Attachment of mortgage—Creditor of goods attached.—Arresting Officer returning custody to superior who keeps them in the custody of the sheriff.—Arresting Officer, and nature of sheriff's duties.—Personal of goods and way of loss in the custody of the sheriff.—Code of Civil Procedure, 1895, c. 107, s. 41 and s. 118 passed by Allahabad High Court—Indian Penal Code, 1860, s. 424, 425 and 426.**

Under s. 42 and s. 42 read with s. 118 passed by the Allahabad High Court under the Code of Civil Procedure, it is not proper for the Arresting Officer to keep the goods in the custody of a superior and for the latter to commit it to the sheriff. Consequently would in such a case, be the failure of

the superior and his provision would be on behalf of or in respect of the court.

When a property has been legally attached by a court, its possession passes from the owner to the court or its agent. If the owner, during the continuance of such possession, to keep and after back possession of the property, he acts unlawfully and causes wrongful loss to the court. His act, therefore, amounts to dishonest misappropriation of property, and is punishable under s. 413 of the Penal Code.

#### India v. State of Uttar Pradesh

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Non-Existence of a reasonable suspension—*Section applicable*

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Carriage by rail—Non-delivery of goods to the consignee without caused by negligence or gross loss, destruction or deterioration of goods—Condition precedent of proving the claim for compensation within the prescribed time, whether relevant—*Indian Railways Act, 1905 s. 77.*

Failure to deliver the goods to the consignee is caused by the negligence or gross loss, destruction or deterioration of goods under s. 77 of the Railways Act and cannot, therefore, be deemed under the claim to be proved with the Railway Administration within six months from the date of delivery of goods for carriage.

The provisions of Articles 19 and 31 of the Constitution Act guaranteeing fundamental rights to life and property are equally to and non-delivery, or delay in delivery of goods cannot be projected over the provisions of s. 77 of the Railways Act as it is held that the failure of non-delivery of goods does not fall under that section.

#### Governer-General-in-Council v. Moudali Lal

1

Chapman's power to order of reference—A dispute as to Commission of University authorities or teacher—Whether judicial and to be referred to arbitrators with the principles of natural justice.

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Objections framed by the Constituting Magistrate—Power of the District Court to withdraw or drop the case—*Code of Criminal Procedure, 1898 ss. 193 and 197—Indian Penal Code, 1860 ss. 193, 213 and 219.*

Presentation of complaint of Vice President—Dismissal of their Government—Whether and when necessary—*Code of Criminal Procedure, 1898 s. 197—Indian Penal Code, 1860, s. 19.*

The District Court has no power to withdraw or drop charges a charge framed by the Constituting Magistrate.

its power under s. 128 or 129 of the Code of Criminal Procedure that it failed to observe or oblige to the changes or amend.

[One of the accused was concerned on a charge under s. 109 and the other under s. 105, 106 and the Sessions Court charged them under ss. 104 and 105, respectively.]

The Bench of a Judge, Panchayat, is a judge as defined under s. 19 of the Penal Code and in each clause within the provisions of s. 105 of the Code of Criminal Procedure. The provisions of s. 105 is, however, limited only to those who held such office at the time the complaint is filed, the holding of such office at the time the act complained of was committed being immaterial for the purpose.

Indian Jurist, 1911, Thakur Bhagendra Singh

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**Code of Civil Procedure, 1908, s. 11 and O. II, s. 1.**—Plan of the petition is not maintainable under O. II, s. 1, unless and except if

In the appeal the main legal point raised, were that the rule was framed by the principle of no prejudice and O. II, s. 1, C. B. C.

The court also considering these plans held: (i) that where the bar of s. 11 of O. II, Code of Civil Procedure, was pleaded, one had to see what gave occasion to and was the foundation of the suit and what was the nature and foundation of the other suit and also whether when the first suit was filed on the alleged facts of the case then could the alleged facts, or events enable the suit to seek the remedy which he had sought by the second suit;

(ii) that in order to remove the bar of s. 11 of O. II Code of Civil Procedure when had to be determined was whether what formed the foundation of the suit, and enabled the plaintiff to seek, his relief could include the plaintiff to seek a larger relief which could include the relief which was sought by the second suit;

(iii) that in a certain cases the bar of s. 11 of O. II Code of Civil Procedure was in joint nature with the bar created by s. 11 of the Code and various other bars which could be pleaded under the former head of "excepted";

(iv) that a bar of O. II, s. 1, Code of Civil Procedure was not only a matter of substance but was one of procedure though there appeared otherwise reason for removing such a procedural bar;

(v) that the plea of no prejudice could only be available if it could be held that the matter in the first suit was directly and substantially in issue in both the suits or that any matter which might and ought to have been made the ground of defence or attack in the former suit had been omitted.



There, then, is a distinction between proceedings on the one hand and process, 'protection' and 'redress' on the other.

An election petition being a purely summary proceeding is known to contain but such process as are contained under s. 141 and O. XXIII. Only of Quia Fama can be awarded for an election petition only if there have been contested votes of it by a return. There being no provision in the U. P. Panchayat Raj Act conferring such process on the Sub-Divisional Officer he could not exercise them.

The inherent power of court in its process and in just any order which it deems necessary in the nature of justice irrespective of whether express provisions of the laws of procedure provide for it or not, is also not available to an election tribunal so that it is not a court and possesses no criminal law powers. An election tribunal can pass only such orders as the provisions of the Act under which it is created, provide for.

The principle of implied power which sustains the doing of all things necessary for the enforcement of its order relates to the variation of an order already passed. It does not refer to a power to be exercised in anticipation of an order which may subsequently be passed. The power of the Sub-Divisional Officer to declare a victory or declare the petitioners to be duly elected does not mean that before such a declaration is made he can direct the petitioners to refrain in order to restrain the opposite party from performing his duties.

The Sub-Divisional Officer consequently had no jurisdiction to stay the transfer of charge pending the disposal of the election petition.

The petition was accordingly dismissed.

*Rameshwar Dugal v. Sub-Divisional Officer  
Chamkaur*

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—s. 148(1)(b)—Order of removal for the same trial whether subject to and in the appeal to Supreme Court.

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—s. 148—Application for cancellation of decree—Decree affirmed on appeal—Matter of decree-affidavit comes for power to award the decree.

But, the proper court for making the application under s. 148 is Court where an appeal has been decided on matters and the decree of the lower court has merged into the appellate decree which is the appellate decree and not the trial court.

Only a decree is affirmed by the High Court or merged into the decree of the High Court and it is no longer open to the lower court to vary that decree by way of appeal.

*Babu Mand Nathani v. Jalandhar*

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—s. 148, O. XX, r. 3 and O. XXII, r. 3—Substitution of legal representatives of the sole plaintiff—Application for

that has no value of the court—Effect of the decree passed in the name of the deceased plaintiff's next of kin awarded decree—Can whether may be decreed as with granting

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—O. XIX. s. 43 and v. 148—Request for withdrawal High Court  
—(1) it is improper for the granting officer to keep the goods in the custody of a superior and for the latter to return it to the debtor holder

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**Code of Criminal Procedure, 1898**, s. 5, 435—*Grant of decree by Sessions Judge, whether district town, that of Sessions Judge—Whether the grant of an Assistant Sessions Judge an original criminal case is that of Sessions Judge—High Court, whether such revision is criminal revision direct against the order of an Assistant Sessions Judge passed in appeal*

By s. 435 of the Code of Criminal Procedure the High Court or the Sessions Judge may call for and examine the proceedings before any inferior criminal court or satisfy itself by itself as to the correctness, legality or propriety of any finding, sentence or order

The High Court, in a rule, does not exercise criminal revision unless the Sessions Judge has first been approached in this regard, the rule however may be relaxed in special cases

Where an Assistant Sessions Judge disposed of an appeal on a transfer from a Sessions Judge the question arose whether a revision against the order of the Assistant Sessions Judge could be filed direct to the High Court without the Sessions Judge being approached in this regard in the first instance

Held, that the Court of Sessions is the proper purport division and many cases are provided over by the Sessions Judge or Assistant Sessions Judge and transfer by an Assistant Sessions Judge. For the purpose of s. 435 of the Code of Criminal Procedure the order of the Assistant Sessions Judge is treated from that of the Sessions Judge where an appeal is transferred to an Assistant Sessions Judge is still to be a proceeding before the Sessions Judge and not before the Sessions Judge. Further the Court of an Assistant Sessions Judge is an inferior criminal court as that of the Sessions Judge

Consequently the Sessions Judge can exercise a revision against an order of an Assistant Sessions Judge even though passed in the exercise of an appellate jurisdiction



The High Court would, accordingly, not set aside an application in remission already against the order of an Assistant Sessions Judge unless the Sessions Judge had first been so prompted in this regard.

**Magisterial Board, Appeal : When sought**

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—*—* ss. 195, 198 and 199.—Possibility of public-spirited-officials' order of remission without taking grounds of its opinion; validity; absence of High Courts' power to set ring aside an order of Sessions.

437

—*—* ss. 198, 200, 201 and 211.—Remand of prisoners to the courts of magistrates by Magistrates of the second class and specially empowered in this behalf by the State Government. Whether admissible as evidence—difficult, if possible.

568

—*—* ss. 195, 198, 200—If a temporary Sessions Judge, who takes over the file of another temporary Sessions Judge in the same session division, can make a remission order : 431  
*Cr. P. C.* in regard of the former order : 439 *Cr. P. C.* commented on the view of his predecessor.

The question referred to the Division Bench by the learned Single Judge was, "whether on a temporary Sessions Judge being transferred from a judicially another temporary Sessions Judge who is appointed to the judicial post takes over the file of the transferred officer and assumes the powers of the first officer as 'successor-officer' under s. 401 Code of Criminal Procedure in respect of offences committed on s. 198 of the Code that were committed in the court of his predecessor."

The Bench then considering the question as follows:

Held (1) that a temporary Sessions Judge who takes over the file of another temporary Sessions Judge in the same session division as in all manner and purposes a pending officer of the court of Sessions and as such exercises the powers and performs the duties of that court.

By this a temporary Sessions Judge can therefore make a remission order s. 198, Code of Criminal Procedure in respect of the offences falling under s. 198 of the Code that were committed in the court of his predecessor.

Held that the answer to the question referred must therefore be in the affirmative.

**Board : Sent**

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—*—* ss. 191—Change also

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—*—* ss. 197 A—d., was introduced only to speed up and simplify the procedure and not to lessen the degree of proof.

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—*—* ss. 198 and 201—Change framed by the Constituting Magistrate—Power of the Sessions Court to withhold or drop the same.

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— 148-5—*Review on criminal appeal of the judgment and order passed by the High Courts in appellate proceedings—*  
*By the High Courts has jurisdiction to give.*

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*Confession in the course of investigation—**Admission of by Magistrate of the second class are specially empowered in the behalf of the State Government.**Whether admissible in evidence—Code of Criminal Procedure, 1898, s. 154-156, 157 and 157A—Indian Evidence Act 1872 s. 20.*

*Presumptive judgments of Privy Council—Reading given by the High Courts—**Provisions of Indian 1900 Act 215.*

The accused while in a judicial lock-up in charge of an Assistant District Prisoner and permitted by police head constables were alleged to have made a confession which was recorded by a Magistrate purporting to act under s. 154 of the Code of Criminal Procedure, of the second class is there being specially empowered as also behalf by the State Government.

Held that s. 154 of the Code of Criminal Procedure did not empower such a Magistrate to record for confession, and the confession was therefore inadmissible in evidence. The defect being one of substance and not merely of form and going to the root of jurisdiction was not curable under s. 483 or s. 487 of the Code. The accused being for all practical purposes, in police custody, the confession could not be treated as received in evidence in charge sheet confession made in an ordinary prison. The confession could not be admissible under s. 79 of the Evidence Act unless some the latter part of that section simply assumes that the signed the statements of witnesses during police custody has in them no how in so as to be corrected which is provided for and governed by s. 154 of the Code. Proceeding on the analogy of the principle laid down under s. 156 of the Code the whole proceeding before the Magistrate in this case would be void.

Held, further, that Article 226 of the Constitution provides that the law administered in existing High Courts shall extend to the appropriate authority that be the case is conclusively before the commencement of the Constitution. The law laid down by the Judicial Committee of the Privy Council was so far as it conflicted with any ruling of the Supreme Court would therefore, be binding on the High Courts in India.

Singhvi Singh - *State of Uttar Pradesh*

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*Confession to a Government Post—**Obtained by postman's communication of confidential Government service how acquired.*

125

*Constitution of India, 1950 Art. 18—the abolition of religious minority schools existing between the ages of 10 and 15.*

- case was first arising up in and then asking that September 8, 1943, such a provision for show cause notice and opportunity against proposed responses to the latter case—*same*, whether constitutional 169
- Am. 14 and 140—*Library of Congress, copyright and gross distribution of duty, against a Police Officer—*Forward* up under U. P. Thompson. (Administrative Tribunal) Rules, 1947, whether discriminatory and void 167
- Am. 191(100)—*Order of removal for air case trial, whether subject to and its law appeal to Supreme Court 7
- Am. 224(100)—*Appeal to Supreme Court from an order of removal passed or quashed by the High Court in a Criminal proceeding—Whether covered by a temporary order of (i) of the statute 163
- Am. 188 and U. P. (Temporary) Control of Rent and Eviction Act, 1943, or 1 and 14—*Magistrate reporting appeal orders for penalties to maintain pay for pension—*distinction* demanded by the Government—Whether the State Government bound to send for the record of the Revenue Court returning power under a, 14 of the Act.

Well, that writing for the record is not a conclusive precedent in the passing of the order under a 17, the word 'may' is used in the section in the penalties and not in the mandatory case

It is no doubt desirable that the State Government should also send for the record of the revenue, but on the view taken it cannot be said that the State Government acted illegally in not sending for the record of the case before the Additional Commissioner.

The requirement that the order of the District Magistrate is referred to the order of the Commissioner and therefore the record of the order of revision does not carry on its face. Even though there may be a merger of one order with another, there is no merger of the record in which the law defines one panel.

An order of the Commissioner demanding a revision against the order of the District Magistrate pending an existing prosecution is not an order 'granting or refusing prosecution'. The question of merger of order therefore does not arise.

Further it has not been explained how the application was prejudiced by the State Government's law, assuming the record of the Commissioner's court. Under the circumstances the Court is not bound to quash the order of the State Government.

The opinion was expressed on the argument that the District Magistrate acted, and not the State Government, had the power to grant permission to file a writ for apprehension. This question should more properly be raised before the Court which is seized of the suit.

**Rachab Chander Jais v. State of Uttar Pradesh**

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—Art. 226(2) a person under a writ can be dismissed as having no locus in rem. No steps without considering cause of delay—extension of time to be considered.

172

—Art. 226—Delegation of power—Locus of application to U. P. Government for land acquisition for the State.

173

—Art. 22, applicability of, to person "connected with defence"—Writ of habeas corpus—Delegation of power—Locus in rem.

"A member of a defence service" or "a person holding any post connected with defence" have been included and the conclusion appears to be sustained because the constitution makers wanted to make the dismissal and removal of these persons non-judicial. As the plaintiff was an employee "connected with defence" section Art. 311 will not apply.

After pleading guilty there was no question of giving him any opportunity to explain and whether he had committed the theft or not.

There is a contrived finding of fact, based on evidence that the plaintiff did refuse to accept the second offer since section 31 does not in a manner so, and also the employers had not attempted to give him an opportunity.

The concurrent finding of fact shows collusion, opportunity having been given in finding.

**Raja Narain v. Union of India**

99

**Group of Amalgamated Judges—Whether dismissed from the office of Justice Judge and if inferior to it.**

100

**Dismissal from service of a Police Officer of subordinate rank by the Government—Whether competent—Charge of misconduct, dishonesty and gross dereliction of duty—Proceedings under Criminal Rules—Whether discriminatory and void—Indian Police Act, 1947, s. 3—U. P. Government (Deliverance Officer District) Rules, 1947, ss. 4(1), 5 and 10—U. P. Police Regulations; Raj. Off.—Constitution of India, Arts. 16 and 141.**

Held, unanimously that the power to dismiss, suspend, or reduce a police officer of subordinate rank, served under a, 2 of the Police Act or the Imperial Criminal Code and other

scholarship officers is an authority too subject and in itself not to the provisions in the Commission under which it and awards (including under the private Government class in the United States) in a State hold their office in the pleasure of the Governor and are in such, liable to removal at the will of him. There is, therefore, no authority in the plea that the Governor has no power to remove such officers from office.

(For *Magnus v. Das Gupta*, §) contrary to request of any of the charges for immunities, deprivation and great deprivation of duty) announced in a 4(1) a police officer could, as a way to proceed against duty under the U. P. Disciplinary Proceedings (Administrative Tribunal) Rules in the U. P. Police Regulations according to the choice of the authorities. The procedure laid down in the act is, however, subjectively the same and, therefore, the opportunity of an officer under the Commission under the United States is not to be treated as subject of Art. 14 of the Commission. The fact that the order of a Police Authority in its capacity under the Police Regulations is made applicable whereas that of the Governor under the United States is not made applicable cannot be said to affect the guarantee of equal protection since it affects only the level of duty with the Governor who has to decide the matter himself. Rule 18 of the United States as to the as it obliges the Governor to accept and pass the order of punishment as recommended by the Tribunal may, in view of the absence of such obligation on the corresponding authority under the Police Regulations, be regarded as inconsistent with the Commission but the period validity of this rule does not, being essential, affect the remaining rules.

(For *Das Gupta*, §)—The Tribunal Rules as to the as they do not provide for the appeal against the decision of the Governor are in view of the right of appeal provided for under the Police Regulations subject to an appeal to the Governor and not, therefore, with the State. It is difficult to agree that the right of appeal is a right without substance. The contrary view shows the violation of the promise and is liable to change in view over the difficulty.

#### *Jayraman Prasad Sharma v. State of Uttar Pradesh*

**Dismissal of a Police Officer—Departmental order provided by Municipal Statute—Article 14.**

**Dispute as to Constitution of University authorities or bodies—Government power to make an extension—Whether judicial law to be extended in compliance with the principles of natural justice.**

**Director Magistrate—Within the meaning of s. 205 of the U. P. (Temporary) Control of Rents and Eviction Act 1947 read**

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with a 10% of the value of personal property it includes an holding of Dutch National as in a joint venture company.	32
<b>Financial Tribunal.</b> —Whether is a Court and whether the relevant powers of a court available to it.	38
<b>Registration of Deeds for purchase or lease of a parcel of land which, including income tax.—</b> Considered the whether con- firmed during passage of app.—Finance Commission Act, 1989, s. 1 outside of Civil Procedure 1989, O. 100A, ss. 4 and 7.	
The usual discharge is in 1 of the Commission, but is not limited to discharge of monetary claims, only but cannot dis- charge in satisfaction of all other claims, eg. using possession of property.	
The managing member of a joint Hindu family can give a valid discharge of liability under a partition deed for keep- ing delivery of possession on behalf of his minor sons, and thereby they would not require all the members of the joint family from the date of the deed. The limitation or discon- tinuation of claims under O. 100A ss. 4 and 7 of the Code of Civil Procedure has no application in such case.	
<b>Joint Fund v. Late Jagan Prasad</b>	3
<b>Provisional Act, 1945 v. 1946—</b> Reference for High Commission for protection under the Act, during period of	34
<b>Financial Handbook, Vol. II, ss. 11.1 and 11.2—</b> Confirmation in a Government gazette notice. Its preliminary answer—Status of confirmed Government service, their appointment argued the same type of case.—Whether requires the status of ‘quasi permanent’ service.—Difference of contractual and permanent.	
A Government servant on probation is not to be deemed to be concerned in the expiry of the period of his probation, if an order confirming him in his substantive post is issued during the period of probation and passed by the competent authority and that the order confirming the officer, leave, leave, his appointment or extending the period of probation may be passed even after the expiry of the period of probation, provided the decision is based on the work and conduct during the period of probation.	
The confirmation in a Government post accepted in a probationary service is not a right which accrues to him auto- matically on the expiry of the period of probation. He acquires the status of a confirmed Government servant on that post only in a result of an administrative order passed by the competent authority. The period of probation is a period of trial which affords an opportunity to the authority to ascertain the competence of the servant on the post and to	



—*Page 1*—Paragraphs of instructions for Portuguese entry  
into India

Page

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Portuguese's meaning in India—*Explanation of Portuguese term*  
Definition of a Portuguese in 1570.—*Portuguese dir 1564, no*  
205, 2 and 14.—*Portuguese Order, 1566, para 1*—*Portuguese*  
*Philosophy and State of Affairs dir 15 and 15 Oct 15, 1566*  
1717-1570

No case can be supported for a breach of paragraph 7 of the  
Portuguese Order unless he was a Portuguese at the time of his  
entry in India. A natural born British subject entering India  
in 1565 on a passport granted by the Government of Portugal  
did not fall within the term definition of a Portuguese and was  
therefore not liable to punishment for covering up in India  
beyond the period allowed by the law

*Paula Houston v. State of Union Territory*

245

Portuguese of issue by death of title—*Rule of, whether appli-*  
*cable to foreign subjects—Death of title and issue title holding*  
*subject to proof of title—Distinction between—General prin-*  
*ciple as to foreign—Transfer of Property Act, 1882 s. 113(a)*

The law on extinction of issue by death of title applies not  
only to death of issue's title but also to that of his successor  
inasmuch with this difference that the natural conveyance of issue  
at the issue time, being not with the subject himself but with  
his predecessor in estate, the issue is entitled from title to put  
the subject to proof of his title. The question whether when  
the issue has died or dies succeeds to death of title or complete  
extinction of title is a more difficult and is decided on the facts  
of each case in the light of general principles. (1) (2) law issue  
against Portuguese civil action of proving Portuguese title on the  
issue. (3) death of title must be interpreted and (4) where  
death of title is in writing, the document must be construed as  
a whole without undue emphasis on parts stated

Held according to judgment of Government, 1 In *Ram Das*  
*v. Sri Ravi Lakshman Jais* that the facts of this case were  
more compatible to the proposition that the issue had compli-  
ment the subject to proof of his title than that he had denied  
his title and there was, therefore, no forfeiture of issue

*Ram Das v. Sri Lakshman Jais*

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Portuguese of issue by non-payment of rent—*Rule of, against,*  
*when applicable—How to derive? meaning of—Transfer of*  
*Property Act, 1882 s. 114*

The provision of the issue under s. 114 of the Transfer  
of Property Act to relieve the issue from the forfeiture of  
issue for non-payment of rent is equitable the manner of which  
was in the discretion of the court and may well be applied in  
a case where the issue came into issue from a lease or from all kinds



of unnecessary variations in livestock prices tends to work to delay the shipment of the crop or to hasten the harvest.

The impact of crop which the farmer is bound to give or receive as a condition precedent for the grant of the equitable relief causes him first up to the date of tender, when the relief is granted, it means as if his losses had never occurred. The indemnifying of losses and loans is, therefore, deemed to have taken place all through and the farmer does not feel that the Government alleged no denigration of the loans granted to him, charges for use and occupation, but is 'baited' and it is not again in the hands to make that discussion and about his obligation only to the extent of crop due to him in the form of Protection or direct release of the loans.

#### Sovereign Debt & International Debt

150

**Publication of publications which are prohibited—**as tried to put more than stated to are prohibited to change religious faith, agnosticism, order of precedence, system, stating grounds of its opinion, violate or—Scope of High Court's power in setting aside or order of prohibition.—*Order of Criminal Justice Act, 1948, s. 21 & 22-B and 22-C*

(See *Western Day Cases* 1, 2, 3, 4, 5)

The power of the High Court under s. 21 of the Code of Criminal Procedure is limited to examining the grounds of opinion of the State Government on the publications in question being sufficient or leading to prevent their being or to refuse to change religious beliefs, as in s. 21 of the Criminal Code. Therefore, if the State Government does not sign in the order the grounds of its opinion, the order of prohibition must be set aside on that ground alone. The High Court in such a case, has no power to examine for itself whether the publication is in fact prohibited under the reasons stated or is in total defiance.

(See *Day Cases* 1)—That the Government should accept the grounds of its opinion is undoubtedly a serious provision distributing in it, the risk of its reliance under. There is, however, no jurisdiction for the view that the High Court can act as a court in a position of scrutiny under the grounds of its opinion are made by the State Government. The duty, say for s. 21 of the Code of Criminal Procedure on the 1st of the High Court is not to see whether in a particular case the grounds stated by the Government for leading its opinion are correct but to see whether the opinion formed was correct. To prevent this, that the one and the only way is to examine the documents with a view to determine the question whether the publication falls within or is prohibited under any one or more of sections 21A, 21B, and 21 of the Criminal Code.



(ii) that the compensation bonds cannot be held to be Government securities within the meaning of the Indian Securities Act.

(iv) that the compensation bonds which are in the form of promissory notes are fully covered by the definition given in sub-s. (2) of s. 2 of the Public Debt Act.

(v) that if there was some difficulty (though there seems to be none) in holding that the interest on compensation bonds issued in the procedure is not interest on securities it would yet be payable as it would be an interest from 'other' sources.

(vi) that the sums of interest on the compensation bonds are liable to be charged to revenue.

*Raja Jagdishbhai Parag Narayan Singh v. Com-  
missioners of Income-tax, U. P.*

12

*Indian Limitation Act, 1908, s. 1*—Exemption of decree for partition in favour of a joint Hindu family including minor son—Limitation Act, whether suspended during minority of son.

26

—s. 10 and 11 of the First Schedule—If can be set aside over the provisions of s. 72 and 77 of the Indian Evidence Act, 1872.

1

*Indian Penal Code, 1860, s. 404, 41 and 42*—The owner during the absence of a member of his property by doing large in possession of Court's agent means in force and when both portions of the property—If by any persons in dishonest removal of property causing wrongful loss to the owner and if a punishable under s. 404 of the Code.

14

—s. 109, and Code of Criminal Procedure, 1898, s. 100 et—

In a case under s. 109 Indian Penal Code only two witnesses required in the committing magistrate's court—Interpretation of one of these was really inadmissible—Magistrate ignored the evidence of other identification witnesses produced for the first time at the trial—Whether ignoring of such evidence justified.

*Notes*, the Legislature amended the Code of Criminal Procedure only to speed up the committing proceedings and not to show the degree of proof which was considered necessary earlier. The trial court was justified in looking doubtful about the identification of these witnesses who were not mentioned in the committing magistrate's report.

—s. 113—Identification of property cannot be placed on the same footing as identification of a person. The owner is well acquainted with the stolen article and even though inevitably there may be an assumption that an owner can very frequently be caused to pick up his own article from a large number of similar articles.

The rule laid down in *Lalit Singh's* case is not applicable in a classification of property.

*State v. East India*

32

*State Police Act, 1933*, s. 7.—Demand for, serving of a Police Officer of subordinate rank by the Governor—Whether competent.

107

*State Railways Act, 1925*, s. 71.—Non-delivery of goods to the consignee—Whether caused by expenses in raising land, the traction or deterioration of goods—Consent of persons of preferred the claim for compensation within the prescribed time whether insisted.

1

*State Railway Establishment Code, 1944/1945*—Railway—Miscellaneous persons—Whether entitled to a right to continue in service till 50 years of age.

225

*State Stamp Act, 1938*, ss. 31, 32 and 33.—Power of a document to deliver the determination of stamp duty.—Power of Collector to impose the duty.—Whether does within duty discharge.

73

official member of a society—When has a right to bring suit in civil court.

631

*Statute Chapter in U. P.*—Power of State Government regarding regulation or adjudication of industrial disputes—Grant of immunity, of.

State Government setting up conciliation boards and industrial tribunals referred any matter to the order as to its jurisdiction after the decision of conciliation proceedings of public duty, as a condition of the order.—U. P. Industrial Disputes Act No. XXIV of 1947, s. 3 of (1), (3) and (4).

s. 3 of the U. P. Industrial Disputes Act empowering the State Government, under sub. (1) of section 3, to refer industrial disputes to conciliation or adjudication and a joint industrial and regulatory order as that behalf if it is in its opinion, necessary or expedient in the interests of public safety, convenience or order, and is constitutional and has not other than the view of statutory delegation. All that has been left to the Government by that section is to carry out by subordinate rules or orders the policy and purposes of its Legislature defined in the Act within the prescribed limits and there is, therefore, no delegation of essential legislative function to the State Government.

The orders of the State Government under s. 3 of the Act setting up conciliation boards and industrial tribunals for settlement of industrial disputes are valid and effective, although they did not declare therein that the State Government had decided, under s. 3 of the Act, to set up or regulate any of the tribunals in the interests of public safety, convenience, etc.

Where certain conditions precedent have to be fulfilled before a subordinate authority can pass an order (as is necessary in the exercise of subordinate legislation) it is not necessary that the satisfaction of those conditions must be proved by the order itself unless the law requires it, though it is most desirable that it should be so, for in that case the persons that conditions were wanted would immediately know that the order would be shown on the point challenging the fact of satisfaction, to show that what is stated is not correct. But even where the record is not there on the fact of the order, the order will not become illegal or void or void only in further breach or failure on the authority putting the order in issue by other means (as also does through an affidavit filed in support before the Supreme Court) till the conditions precedent were complied with. This would mean in case the defect and under the order valid and effective.

The Synthetic Cotton Mills Co. Ltd. v. The  
State Industrial Tribunal, 1 P

**Industrial Relief—Power of High Court to grant—On conditions for leave to appeal to Supreme Court granted from an order directing payment for arrears and damages**

**Interpretation of Statute—Every part of statute should have effect—General provisions of Statute, whether should state in special provisions—Government Order of 1945 and of 1946 under I. P. Industrial Disputes Act, 1947, construction of**

In clause 5(a) of the Government Order issued by the Government of the United Provinces as proviso of the proviso embodied in item 10 of the I. P. Industrial Disputes Act, 1947, any application is assigned satisfaction of employees. May be application is being made the Board to suspend from any industrial dispute.

Clause 12 of the Government Order likewise provides that no employee shall during the continuance of its inquiry or special findings or dispute any condition not with the written permission of the Regional Conciliation Officer concerned.

Where an application was made by an employee's Association under clause 5(a) of the order for the dismissal of the writ and upon which the company was pending under clause 12 and the Board granted the application but the Labour Appellate Tribunal dismissed it on the ground that the application under clause 5 (a) was not maintainable. The Employees Association filed a petition under clause 10(a) which was dismissed and its Special Appeal the order was allowed but a certificate under Article 133(1) and 134(1) (c) was granted to file an appeal to the Supreme Court.

On appeal to the Supreme Court

Held, that in the interpretation of Statute the courts always presume that the Legislature intended every part thereof to have a purpose.

and the legislative intention is that every part of the Statute should have effect. The rule of interpretation of Statutes further is that the general provision should yield to specific provisions and the general provision applies only to such cases which are not covered by the special provision. On an application of the above rule of interpretation of Statutes clause 2 (a) has no application in a case where the special provisions of clause 21 are applicable.

Consequently when an applicant was pending before a Conciliation Officer clause 18 applied in respect of any discharge or dismissal of a workman and the employee could not take the advantage of clause 10(a) of the Conciliation Order and such an application could not be lawfully entertained by the Board.

*The J. K. Cotton Spinning and Weaving Mills Co. Ltd. v. The Board of Water Probation.*

**Jurisdiction of Civil Courts—When of local jurisdiction.**  
*When of absolute or of acquiescence in exercise of jurisdiction.*  
*When of, on the matter of, exerciseability of power granted.*—Order of Civil Procedure, 1908, s. 21, 49 and 101.

It is well settled that the want of local jurisdiction is a civil court does not stand on the same footing as the want of inherent jurisdiction. It is when the court is not in all respects to try the case. The forum though not the locus is available by consent or waiver.

Accordingly, where the court does not suffer from want of inherent jurisdiction but simply the want of territorial jurisdiction arising from the fact that the cause arose of action arose outside the local limits of its jurisdiction and the defendant does not object to the suit being referred for decision to the defendant, he is estopped from subsequently challenging the jurisdiction of the court to entertain the suit or to enter a bar objection to the suit itself.

*See* *Lat. Form. v. Sir Raj. Vaid.*

**Land Acquisition—Award of Collector—Application for revision of decision on award to court for decision.**—*Limitation for*—*two months from the date of Collector's award.*—*Section 47—Land Acquisition Act, 1904, s. 48 paragraph (2).*

The limitation for an application under s. 48 of the Land Acquisition Act to refer the objection against the award of the Collector to the Court for decision under sub s. "two months from the date of the Collector's award." The knowledge of the party affected by the award being an essential requirement of the plea and naturally justice, the Supreme Court in the award" meant two (a) the date when the physical act of winning or signing the award was done and the date when

the award is either communicated to the party or otherwise comes to his knowledge actually or constructively.

**Raja Harsh Chandra Raj Singh v. The Deputy Land Acquisition Officer**

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**Land acquisition for the Delhi-Morichan.** By G. P. Government—*Delegation of power—Validity of notification for—Land Acquisition Act, 1894, s. 1(a) and 4—Constitution of India, 1950 Art. 156(3).*

**For justice—Disputes and its effect—Satisfying award of possession—Necessity of, Constitution of India, 1950 Art. 156.**

Under Art. 156(3) of the Constitution, the power of state going to a State Government viz. of the business of the Court, Executive power is and is exercisable by the President. A notification by the Government of India purporting to be a delegation to the Central Government of its powers under to the the purpose of the Land Acquisition Act, 18, therefore invalid and inoperative.

The notification under the aforesaid delegation issued by the G. P. Government for acquiring land for the purpose of the Union N. E. R. Headquarters Scheme is therefore void in law and void as to be quashed.

A single petition challenging different notifications regarding two different and separate parcels of land in both of which all the provisions are not contained is not for multiplicity and not maintainable. The court may however have its doubts as to whether or not all the parties to may be necessary to remove the doubt.

The petitioner under Art. 226 of the Constitution, must it is no doubt that have a continuing interest in the subject matter of the case. Such interest, however, is deemed to exist where the petitioner has a present legal right and is claiming for the same.

**State v. State**

103

**Losses by rioting—Summary jurisdiction of Court to award the same**

104

**Life Insurance Corporation Act, 1954, s. 11(3)—Corporation's power to alter laws regarding employment—(1)(b), inserted clause of temporary employment (1)(b), inserted clause by amending Act amended all doubts—S. 10(1) Enactment of responsibilities and decisions in State Management—S. 10(1) of Insurance Companies (Temporary Powers) Act, 1954, subsection (7) of a S. 1 of Insurance of India Act 1954.**

From a narrow reading of subsection (1) of section 11 of this Act will convince that the transferred employees were to come over as the assets of the corporation on the old terms and conditions until there were fully absorbed by the corporation. That is the corporation possessed the power to alter documents and conditions which were then were almost equal in favour of the new terms and conditions to be in force in their initial stage.

The clause (4) of s. 49 of the Act plainly covered the case of transferred employees and clause (44) has been interpreted simply for the sake of making all doubts which might have existed in that behalf.

There is another point on account of which the corporation possessed the necessary authority to make regulations in case of transferred employees also. The main power to make regulations is derived under sub-s. (1) and sub-s. (2) of s. 49 in giving the various matters upon which the regulations may be made is illustrative only. The power itself, and with which we are now concerned, to make regulations belongs under sub-s. (1). The words "such regulations may provide for" in sub-s. (2) clearly point out that the regulations may provide for the matters mentioned in clause (4) in fact will still be made under sub-s. (1). The matters which are stated in sub-s. (2) are stated only for the reason for which provision may be expedient for purposes of giving effect to the provisions of the Act, but they are not all those matters for which provision can be made.

Subsection (1) of section 71 is indeed one of the sections for which provision is necessary for giving effect to the provisions of Act. The list of the matters in subsection (2) is also neither exhaustive nor exhaustive. It is on the other hand illustrative. In order to find out whether the corporation is empowered to make regulations on particular subject or matters the way is not to discover the particular matter in the various items mentioned in subsection (2) but to look to the Act itself and if the Act has contemplated provision for regulation of such matter it will be open to the corporation in the exercise of the power given to it by subsection (1) to make regulations for giving effect to it.

The power of superintendence and direction given to the Local Manager by the section will then extend to all subjects treated within concerning his area including his subordinates also. Since the Local Manager is entrusted with the affairs and business of the Local Office he has a legal duty now upon him to see that the affairs are conducted properly and in accord with law. If any employee or servant acts in a manner which Local Manager considers to be detrimental or injurious to the affairs and business which is entrusted to his superintendence and direction, he will certainly be within his powers to take



such action as is deemed possible by him. The suspension of employees pending inquiry was the charge against him, a veritable monster which he will be compelled to deliver. Therefore upon a finding of acquittal he will not be entitled to the David Morgan fund the power to make the suspension order.

In Reiter Math India v. Life Insurance Corporation of India

102

**Limitation**—for an application under s. 12 of the Limitation Act, 1908, for the recovery of obligation on ground of fraud: for decline—Not matter from the date of the collector's award  
 —Timing of

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**Limitation of filing a writ petition**—Filed under Art. 226 Constitution of India—It can be filed at any time as long as beyond 90 days without considering cause of delay—It is not that in obtaining a certified copy of judgment or order required and the 14 days' limit required for going before to the Bench Committee is to be included in computing limitation.

The question that arose for determination in the instant appeal was whether the writ petition can be deemed due in time merely on the ground that a period of 90 days has elapsed since the date of the impugned order without considering the cause of delay and whether in computing the period of limitation of 90 days which is the constitutional period allowed by the Court a party is legitimately entitled to exclude the time spent in obtaining a certified copy of the impugned order or judgment or to be that and also to exclude 14 days' time required for going before to the Bench Committee under rules of the court.

The court after considering in detail, held, (i) that it will be erroneous to think that a writ petition is deemed due in time merely on the ground that a period of 90 days has elapsed since the date of the impugned order without considering the propriety, expediency or impossibility of the situation and applying one's mind to other factors that are alleged to have intervened and caused delay.

(ii) that where the court is of opinion that application could not be filed within the period of 90 days owing to circumstances which were beyond the control of the parties concerned or other causes which in equity would entitle the court to exclude the delay, there is no bar as far as the maintenance of such an application.

(iii) that a petitioner filing a writ petition should be the subject required to exclude the period spent in obtaining a copy of the impugned judgment or order.

(iv) that the party presenting the application could also be qualified to challenge the entire panel of Masters' fees (regarded for present purpose as Standing Counsel) including the day on which the fees were served.

(v) that even though the order of the learned single judge was of a discretionary nature, the discretion was not on the mere facts but concerned an assigned judicial and equitable principle.

**Saluja Singh v. Deputy Director of Consolidation, Ludhiana University**—*Appeal by a Commissioner of Districts and Sessions in Ludhiana*—*Chandigarh*—*power of order as respects—Whether judicial and as to assigned or assigned with the principle of natural justice*—*Ludhiana District Jd. 1994 v. 10—Director of Ludhiana University, In re J.*

On the recommendation of the Selection Committee, the petitioner was appointed as professor for two years the Professor of Law in Ludhiana University. Respondent no. 1 who had been a candidate for the said post made a representation to the Chancellor challenging the constitution of the Selection Committee and the validity of its recommendations and the resulting appointment. The Chancellor, on receipt of his petition under s. 10 read with Section no. 3 of the Ludhiana University Act 1956, took the Chancellor and after taking the Vice-Chancellor for the University and Respondent no. 1 held that the Selection Committee had been properly constituted with the result that its recommendations and the appointments based thereon were valid and legal. The petitioner thereupon moved the High Court for, inter alia, quashing the Chancellor's order.

Held, that the function or power under s. 10 of the Act being judicial or at least quasi-judicial and there being nothing in the statutory scheme or in Section no. 3 negating the fact that the Chancellor was bound to comply with the principle of natural justice and since the petitioner who was directly and finally affected thereby was not given any notice or opportunity, for it bearing, the impugned order was bad in law and liable to be quashed.

The validity of the appointment itself being in question, the fact of the appointment demanding no petition to the court through a petition to set aside would not be pleaded to a bar to the writ.

**S. E. Gupta v. Chancellor, Ludhiana University**—*Magistrate's*—*and respondents in the a complaint, trying a petition returned of having committed an offence under suppression of Commercial Traffic in Goods and Goods Act, 1930*

**Magistrate of district**—*Application for appointment of district officer of an appeal—Whether court has power to cancel the decree*

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**Matter of records**—Where there is a merger of one order of the referee's authority with another order of the superior referee, (a) if there is also merger of the records in which the two orders are given.

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**Motor Vehicle Act, 1955, s. 96(2)**—Effect of  
Notice of application—remaining in force by the Director, 1955  
and in the event of error by the Director, 1954, 2d ed.

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**Order of Registrar**—Issued or continued by the High Court  
as a criminal proceeding—Appeal to Superior Court from  
such order—Whether ordered by or continued under it (2)  
of Art. 134(2) of the Constitution of India.

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**Order of partition suit**—Order s. 35 of *H. P. Land Revenue  
Act, 1934*—On the compromise application of the parties, if  
under the whole portion of compromise.

The questions that arise for determination were firstly whether in the order and the order of partition suit submitted for partition of compromise showing maintainable property worth more than Rs.100 which purports to regulate the future rights of the parties as to property, secondly, whether the portion of compromise having been included in the order, becomes absolute and finally whether the compromise submitted by the order is binding and binding upon the parties.

The court held—

(a) that the word 'approved' written on the compromise application suggests that the Sub-Divisional Officer only passed the paper properly and not as the application, the proper paper being that the names of the parties should be entered into specified properties.

(b) that the order should be deemed to refer to and include only those provisions of the compromise which specified the properties, it cannot be made to refer to and include those provisions of the compromise which declared the parties to be absolute owners and could it be assumed that the Sub-Divisional Officer was not to power to decide property rights, previously incorporated them in his order.

(c) that since the order is ambiguous it must be presumed that it directed what the Sub-Divisional Officer was asked to do and what he would lawfully do.

(d) that the order of the partition court did not embody the part of the compromise application which declared the parties to be absolute owners.

(e) that in view of the opinion on the first question the whole question becomes moot and it was not necessary to express opinion on them in this case.

*Rangpur Chaudhary v. Ram Adhar Chaudhary*

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*Person designated*—(2), = a person who is referred to not in his private capacity and not in his capacity as a judge

*Person connected with defence*—applicable of Art. 101 of the Constitution of India

*Police Act, 1946* : 1.—(3)—(4) of a Police Officer—Police Regulations, parts 446 and 448—Commencement of—Departmental trial, provided by Magistrate inquiry—Effect of—Para 10 of the Police Regulations, whether applicable to the case.

Where a police officer was charged with dishonesty in the discharge of duty and of dishonesty, corruption and misbehaviour as he was transferred from one station to another after a magisterial inquiry and thereafter dismissed by the Superintendent of Police after a trial under section 7 of the Police Act. He filed a writ petition before the High Court which quashed the order of dismissal on the ground that the police officer having been charged with commission of punishable offences, para 10(b) of the Police Regulations governed the transfer and no case as required by para 446(1) having been registered against the police officer in the police station, the order of dismissal was invalid.

On an appeal to the State for special leave to the Supreme Court on the ground that a magisterial inquiry having been held in regard to partially all the charges, the superintendence of the Department, what, the case was not covered by the provisions of para 446 of the Police Regulations.

Held, that the departmental inquiry was only a further step in regard to the misconduct of the respondent in regard where to the magisterial inquiry was held at an earlier stage.

A combined reading of the provisions of para 446 and 447 of the Police Regulations indicated that para 446 does not apply in a case where a magisterial inquiry is ordered and a police officer can be departmentally tried under s. 7 of the Police Act after such magisterial inquiry.

The departmental trial having been held subsequent to the completion of the magisterial inquiry, the case fell within the express terms of para 446(1) and the trial was consequently valid.

The appeal was accordingly allowed and the case remitted to the High Court for disposal according to law.

State of Uttar Pradesh v. Apollon Prasad

*Police Regulations, parts 446 and 448—Commencement of*

*Power of Collector to suspend the document—after determining that disqualification was proved in fact under s. 10 of the Stamp Act*

*Provision—Judgments of Privy Council—Binding force of on High Court*



and that a test must be applied to every "suspect" case, he ought not to take part in the decision as to as to the relevant facts equally applicable to the proceedings under the Minor Offences Act. The provisions of s. 44(1) of the Minor Offences Act do not leave the question as to which a person may be the qualified learned professional at the determination procedure as an addition to those which arise under the general law. The case to be applied in such cases is also comprised of a test suitable evidence of facts which being prima facie the contrary case the person has otherwise proved. The appeal was accordingly dismissed.

Hobart, Lloyd v. New Transport Authority,  
Tasmania.

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**Prevention of Surcharges of Nyasa Passports**—Decision of State Government, whether and when necessary.

483

**Prevention under Particular Act**—Continued to show case against the starting point of the case, 1944 v. 100.

The period of three months within which the complaint, in an offence, particularly under the Particular Act, must be filed in the Magistrate is to be completed by (1) the date of the offence where the complaint is made directly on the personal knowledge (2) the date of receipt by him of the information where the complaint is based on information received through others, if being concerned in the latter case whether the information is such which he believes contemporaneously or after due enquiry.

The question of the date of the Magistrate's knowledge of the alleged commission of the offence cannot be left to him or be possible to his evidence alone.

R. V. Sharma v. State.

497

**Public Inquiry**—Scope of the date, defined.

525

**Question of Citizenship**—(1) can be decided by the Federal Government at the discretion when is the effect of (2) of Art. 113 of the Constitution of India of 1946—(3) a person who does not obtain a passport and who is in India beyond the date mentioned in the new constitution, s. 16 of the Passport Act, 1946.

The answer given has been that in Abdul Wahid against his admission and removal under s. 14 of the Passport Act, 1946, and his citizenship was that he was not a foreigner within the meaning of the Passport Act, and that he was an Indian citizen in the sense which he was in Pakistan without the meaning of Art. 3 of the Constitution of India. Questions arising in the case were referred to the Federal Bench which after considering them is dead.

Held, (1) that the question of citizenship can only be decided as to the Federal Government in accordance with s. 10(2) of the Citizenship Act and as there was no decision of the Council

Government in the present case that the applicant was not a citizen of India, he could not be persecuted and restricted under s. 14 of the Foreigners Act.

(c) that the rules of evidence framed on all part of Schedule III of the Citizenship Rules, 1940 are not violative of Art. 19 of the Constitution of India and the Central Government has power to discontinue the operation of citizenship on individuals with these rules.

(d) that if a foreigner does not obtain a passport in violation of s. 7 of the Foreigners Order, 1940, he renders himself liable under s. 14 of the Foreigners Act.

*Khadi Chaud v. State*

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**Railway Ministerial Services**—starting service on or after April 1, 1946, or there is service from before that date but such not any less on a permanent post and then,—Whether entitled to pension on service till 60 years of age—4, beneficiaries of these ministerial services, working before 40 years of age were those working before and those entering after September 8, 1946 with a provision for those under 40 and voluntarily agreed proposed retirement in the last—(Major Jadhav—Indian Railway Establishment Code, Pt. 2044-215)—Constitution of India, 1950, Art. 16.

The correct interpretation of rule 2044/2045 of the Indian Railway Establishment Code is that a railway ministerial person may be retained in service between the ages of 55 and 60, provided he consents to be retained. Such retention, however, runs much in the direction of the appropriate authority and can not be claimed as of right for a permanent post, though his retirement is anticipated.

The classification of railway ministerial services starting between the ages of 55 and 60 runs into those entering up to and those entering after September 8, 1946, with a provision for those going before and afterwards, agreed proposed retirement in the last category there is reasonable and permissible and it was therefore fit for the provision of equal pension under the Constitution.

*Railway Chaud v. Union of India*

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**Procedure**—in these ministerial discharge of the receiver on terms of pension on proceedings in which he was appearing.

121

—Duration of, after 40, 50 & 60—Code 8; receiver—Receiver jurisdiction of court in that the last—Code of Civil Procedure, 1908, s. 21, 7.

There is no express provision in the Code of Civil Procedure with regard to the case when and the mode in which the office of receivership comes to an end. A review of the relevant provisions in the following manner, of the law on this subject.

(1) If a resource is appointed in a civil court judgment, the appointment is brought to an end by judgment in the suit.

(2) If a resource is appointed in a suit, without his name being brought before it, will continue so he remains till he is discharged. (3) But after the final disposal of the suit is between parties to the litigation the resource's functions are terminated; he would not be amenable to the Court as its officer till he is finally discharged. (4) The court has ample power to continue its order so that the final disposal of the exigencies of the case is brought.

(5) Chief Justice's reference to the High Court in India made it clear that in the case of a court officer who is taken from a resource whether he is a party to the suit or not, on account of an emergency, jurisdiction before the court ceases to exist. A right of review under the laws then in force was refused.

*See Here and There in South American Jurisprudence*

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**Refusal to grant special leave to appeal by Supreme Court—Effect of on the power of High Court to order to show its judgment in exercise of its inherent power**

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**The Judicials—This of, when available**

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**Review in Criminal Appeal—On the judgment and order passed by the High Court in appellate jurisdiction—If the High Court has jurisdiction to review under a 1914 A. Code of Criminal Procedure, 1908—Effect of the refusal by the Supreme Court to grant special leave to appeal and the remedy available**

The appellants were convicted under a 1914 Indian Penal Code by the Sessions Judge. When the Sessions Judge was sentenced to death while the remaining appellants were sentenced to life imprisonment. Their appeal was dismissed by the High Court on 12th July, 1940, and an application for leave to appeal to the Supreme Court was also dismissed. Therefore they came to the Supreme Court for leave of a petition for special leave to appeal but it was rejected.

The application was made under section 441 of the Criminal Procedure for review of the judgment made by the High Court on 12th July, 1940, with a prayer to set aside their sentence and to re-frame the case in the light of new facts brought to the notice. A preliminary objection was made on behalf of the State that the application for review filed by the appellants was not maintainable.

The Court after considering as follows—

While it is true as the order of disposal of petition for special leave to appeal by the Supreme Court stands the High Court would be bound to follow and it could not review.



as after its judgment in the purported exercise of its inherent power.

(4) that since the Supreme Court has deemed a petition for special leave to appeal to be a criminal case the High Court cannot do that jurisdictionally over this, second and last, petition for leave to appeal or interim application which would limit the effect of disposing the order made by the Supreme Court.

(5) that there is a remedy available to the applicants to approach the Supreme Court under Article 177 of the Constitution in order to secure an order of certiorari, such petition for special leave to appeal as to have the matter disposed of on the merits of justice.

(6) that the inherent power of the High Court under s. 404 A Code of Criminal Procedure cannot be invoked where an order remains in absolute and finality and that the power is prohibited unless he intends to exercise the express provision of law.

(7) that the inherent power which vests primarily in the High Court under s. 404 A Code of Criminal Procedure, that not include power to review its judgment or grounds leading thereto in D. 54,306, v. 1 Code of Civil Procedure, and as the High Court does not possess an inherent power to review its judgments on the grounds of discovery of new evidence or evidence on material facts.

(8) that we are fully satisfied with the view of an appeal law under of the High Court and therefore, s. 404, Code of Criminal Procedure will apply going further in such order And there being no petition in the Code of Criminal Procedure empowering the High Court to review its appellate judgments, in order s. 404 A Code of Criminal Procedure cannot correctly be express provision of the Code for invoking a new category of inherent jurisdiction.

For this, there may be some such as of strength, reliance on having no according to law as where the High Court may exercise its inherent jurisdiction to make consequential amendments to its order but that the inherent power is being exercised to further the ends of justice and the Court is not called upon to review the grounds in its jurisdiction which occurred on the record for the purpose of disposing the matter.

*Indian High v. 1902*

**Replevin**—Appeal the order of an American Justice, granted to appeal, if High Court will exercise a duty.

**Writ habeas**—Furnish part of such balance of money, giving to the legal assets claim—Produce by sale of shares which liable to conversion.

**Single privilege of witness by an intermediary**—Giving power of making—Proprietor available to testimony of privilege.







(ii) that there is no reason for the proposition that a suspension of an officer under the law cannot be after a report upon a report submitted to a special police officer.

(iv) that s. 3 of the Act does not require any duty on the part of a complaint to a suspension of the officer against a person suspected of having committed an offence under the Act and that the words of *MAGNIFICENT* as defined in the Act has jurisdiction to take cognizance of an offence on such complaint.

*See, State v. Sosa*

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**Temporary Resident Judge**—who refers over the title of assistant magistrate resident judge in did some sessions, districts, if can make a complaint under s. 424 Cr. P. II in respect of the offence under s. 101, Cr. P. C. committed in the course of his jurisdiction.

361

**Treasure of Property Act, 1922, s. 104 as amended by U. P. Civil Laws (Reforms and Amendments) Act, 1924, if has no retrospective effect and if affects the law given in 1924.**

The question that arose for determination in the appeal was whether the U. P. Civil Laws (Reforms and Amendments) Act of 1924 according to 104 of the Treasure of Property Act did not have retrospective effect and did not affect the law given in 1924 according to that year by a month of 15 days expiring with the end of a month of the seizure.

The Court, held,

(i) that the seizure, being from month to month, the seizure period is commenced on the first of a month and ended on the last of the month, it again commenced on the first day of the first month and continued on its last day and so on.

(ii) that the only right that the appellants possessed in 1924 (November, 1924, was before the continuance of the standing law, was that his monthly seizure for the month of November, 1924 would not be commenced during by a seizure expiring on the last day of November, 1924 but he had no right whatever in respect of seizure for future months.

(iii) that the U. P. Civil Laws (Reforms and Amendments) Act of 1924 which did not have retrospective operation left only the right possessed on 31st November, 1924, in law and could govern the exercise of similar right in future.

(iv) that the seizure in question was legal and the law was equally decent.

*R. L. Bhatia & v. Bhatia & Co.*

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— 111½—Insistence of issue by denial of sale—Rule of whether applicable to issue's assignment—Denial of sale and issue's sale putting issue on proof of sale—Insurance for same 321

— 114—Futility of issue for non-payment of note—Refused against when available 326

Transferred employee—Life Insurance Corporation's power to also issue overriding term 327

U. S. Civil Laws (Belgium and Luxembourg Act of 1914—amending a law of the Transfer of Property Act, if has retrospective effect 334

U. S. Industrial Hygiene Act, 1917—Government order of 8/1 and of 11 under no-Commission of 339

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U. S. Penitentiary Act, 1940, s. 10 C and D. The Commission of—(sub-Committee) (After whether can any matter of charge pending disposal of various persons 354

U. S. (Temporary) Control of Food and Medicine Act, 1941 s. 124, 1 and Code of Criminal Procedure, 1940, s. 187—Provisional order—District Magistrate, whether includes an Additional District Magistrate 359

By a 3 Court Control and Evidence Act on and for the application of a person could be that without the permission of the District Magistrate except in one or more of the grounds specified in the section 364

When a sign for evidence was filed on the permission of the Additional District Magistrate the district court was that the rule was interpreted in the necessary permission of the District Magistrate had not been obtained 369

The High Court is against appeal having rejected the one reason, so as appeal to the Supreme Court 374

Hold, that the District Magistrate within the meaning of a 1/2 of the Act read with s. 187 of the Code of Criminal Procedure includes an Additional District Magistrate and no special endorsement by the District Magistrate is necessary to empower the Additional District Magistrate to exercise powers under s. 1 379

Hold further that the District Magistrate within the meaning of the Act does not include a person designated as a person designated in a person who is referred to as in his personal capacity and not in his capacity as a judge 384

The Council Fellows Ltd., *Ranger v. District Council* 389



was in the use in 1902. On 11 June 1911 *A* opposed *B* for possession over the site the trial court ruled in the conclusion that *A* had left the village and *B* had no right to enter the premises. The case was decided for possession over the site. *B* appealed and during the pendency of the appeal the Union Pradhik Samadhi Committee and Land Revenue Act came into force. It, however, did not have any effect on the pendency of the suit. On expiry of the term the Judge dismissed the appeal and the decree in favour of *A* was confirmed.

In second appeal filed by *B* the Commissioner in 1913, on 12 July 1913, when the Union Pradhik Samadhi Committee and Land Revenue Act came into force *B* and not *A* was in possession of the premises as well as of the site as mentioned in case of 1902 of the fact the lower appellate court should not give a decree in favour of *A*. (For *Mishra and Dutt*, JJ. Decree, C. J. dissenting)—

Under a 1 the court held did not constitute a sale of a tenement but that it referred to a site that had a legal owner. A person who compounds on the land of another and constructs a building on that land of the other, still not by that compound under the rights of the owner was bound by the law of limitation imposed under the provisions of 1, 2 of the Union Pradhik Samadhi Committee and Land Revenue Act, any other rights or interest in acquiring the building on that land or to have acquired any interest in that land.

It does not refer to a person, who has encroached upon the land of another person and erected a building over there on his own possession over the building, and the site thereof by acquiring thereby a legal interest.

(For Decree C. J.)—Though the site of *A* was deemed, it was by appeal and, under a 1 of the Union Pradhik Samadhi Committee and Land Revenue Act came into force on 12 July 1913 the appellate court was bound to consider the provisions before deciding the appeal. It had no remedy in the schedule the decree passed by the lower court was correct or not it had to deal with the matter as if it were itself trying the case, when the only construction has been on the site belonging to and upon in the occupation of *B* while *B* could continue to use and be in occupation of them. *A* who was not the owner and was not even in possession of them could not possibly be said to continue to own them after 12 July 1913.

From it, the court held it could be seen that under a 1, the court held in 1902 in 1902 that *A* had no right to the site of the building as explained above. The only building then stood on 12 July 1913 was the site that belonged to the appellant



and in their own physical persons, and since no building is hanging in the respondents' name so that their air land could be deemed to be ceded with them. On 1st July 1962 they lost their rights as tenants.

**Building Singh v. Nishi Rao**

**T. P. Kamikar's Revision and Land Revenue Act, 1956, s. 5 (4) (i), (ii), 8 and 10—Simple mortgage of villages by an intermediary—consequence of suing—Proposals available in exercise of mortgage deed, whether include (a) Village dues in Rs. 1000000 and intermediary's dues, (b) will-trees in shade and buildings**

**Uthir Pradipth Kamikar's Revision and Land Revenue Act, 1956, s. 5—The area belonging to or held by' at the auction resumed**

**Winding up of a company—Liability of delinquent directors etc.—Liability for proceedings against Companies etc.—Liability of legal representatives of delinquent directors Indian Companies Act, 1913, s. 174(1) and (2), 224(2)**

The period of 'three years from the first appointment of a liquidator in the winding up', for an application by the liquidator for recovery of the liability of a director or any other officer of the company for mismanagement, etc. of any injury or property of the company, is to be computed not from the day of the appointment of the provisional liquidator under s. 115(2) of the Act but the appointment of the liquidator under s. 174(2) following in simultaneously with the order of the winding up.

The liability, assumed being various or spontaneous is not enforceable against the heirs or legal representatives of the delinquent director or officer

**Widow's Estate v. South Indian Company Ltd.**

**Words and Phrases—Bare is correct meaning of —'purpose' or 'object' in the Statutes Interpretation Act, 1950, if bare form and substance**

**Will positive—Mishakaram and its effect—Satisfactory manner of provision—necessity of**

**Ward's (Minors)—to defend in prosecution under provisions of Food Administration Act, 1954**

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Civil Appeal No. 423 of 1956, from the judgment and decree, dated the 14th July, 1954, of the Allahabad High Court in Second Appeal No. 12475 of 1954.

The facts appear in the judgment.

Complaincy by T. M. Sen, Advocate for the appellant.

K. P. Gupta, Advocate for the respondent.

The following judgment of the Court was delivered by—

Sen, J.—On January 30, 1952, Bhola Nath Samthra Ram is agent of the respondent L. Mandhata delivered a bale of cloth to the railway administration L. I. Railway at Agra railway station for carriage by railway to the Cloth station in the L. I. Railway. The consignment was accepted by the railway administration and a railway receipt was issued at the time of the manager Bhola Nath Samthra Ram. Bhola Nath Samthra Ram endorsed the railway receipt in favour of the respondent and sent it by post to the respondent. The bale of cloth did not reach Cloth, and the railway administration was unable despite efforts to trace it. There was correspondence between the railway administration and the respondent about the consignment. Failing to obtain satisfaction for the loss suffered by him, the respondent served a composite notice under s. 77 of the Indian Railways Act and s. 76 of the Civil Procedure Code on December 2, 1955 and thereafter on May 18, 1956. Mandate No. 184 of 1956 in the name of the II Judge, Allahabad, for a decree for Rs. 715 75 being the 'price of the bale' and Rs. 100 'for loss on account of non-delivery'. The railway administration returned the claim on the plea, among others that the suit was not maintainable because an effective notice under section 77 of the Railways Act and that the suit was barred because at the date of the

limitation of the suit, the period of limitation prescribed by Art. 91 of the Limitation Act had expired. The trial court dismissed the suit. In appeal, the Additional Civil Judge, Bikaner, reversed the decree passed by the trial court and dismissed the suit. A Full Bench of the High Court of Allahabad reversed the decree passed by the first appellate court and restored the decree of the trial court. With certiorari of leave under Art. 133(3) of the Constitution, this appeal has been preferred by the Union of India.

4th  
Sesssion  
Opened  
in Court  
March 1st  
1951

Section 77 of the Railways Act, 1922 has in it no material provision:

"A person shall not be entitled to . . . compensation for the loss, destruction, or deterioration of . . . goods delivered to him . . . carried on his claim, or . . . compensation has been preferred or sought by him or on his behalf with the railway administration within six months from the date of delivery of the . . . goods for carriage by railway."

Section 77 manifestly prescribes a condition precedent to the maintainability of a claim for compensation for goods lost, destroyed or deteriorated while in the custody of the railway administration. The notice prescribed was not served by the respondent upon the railway administration within six months from the date on which the goods were delivered for carriage, and prima facie the suit would be barred for non-compliance of a mandatory condition precedent. But the respondent pleaded and the plea has found favour with the High Court that the suit filed by him was for compensation not for loss, destruction or deterioration of the goods but "for non-delivery of the goods". In the view of the High Court, a claim for compensation for non-delivery,

right  
concerns  
the railway  
administration  
in connection  
with the  
Indian Law  
Section 3.

of goods is a claim distinct from a claim for compensation for loss, destruction or deterioration of goods, and to the enforcement of a claim of the former variety by action is a claim of law s. 39 is not a condition precedent.

The railway administration in India is not an owner of goods. It is merely a bailee of goods entrusted to it for carriage. Section 32 of the Railways Act provides the measure of the general responsibility of a railway administration as a carrier of goods. It thus settles the responsibility of a railway administration for loss, destruction or deterioration of goods delivered up to be carried by railway is subject to other provisions of the Act to be that of a bailee under sections 143 and sections 146 of the Indian Contract Act, 1872. Sections 143 and 146 of the Indian Contract Act deal with the duties of a bailee. If a bailee takes as much care of the goods bailed to him as a person of ordinary prudence would under similar circumstances of his own goods of the same bulk, quality and value as the goods bailed to him, in the absence of a special contract, he is not responsible for loss, destruction or deterioration of the goods bailed. By sections 146 and 147 of the Indian Contract Act, the bailee is under an obligation to return or deliver according to the bailee's direction the goods bailed as soon as the time for which the goods were bailed has expired or the purpose for which the goods were bailed has been accomplished and if on account of default of the bailee the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods. The railway administration being a bailee of the goods delivered for carriage so it is therefore a bailee during the period when the goods remain in its custody for the purpose and in the course of carriage and for the purpose of delivery when the goods are carried to the destination. But the quantum of care which the railway administration is required to take is that care which it

would this having regard to the bulk, quality and value of its own similar goods.

Section 73 of the Railways Act is framed with a view to enable the railway administration to make enquiries and if possible to recover the goods and to deliver them to the consignee and to preserve such claims. It imposes a restriction on the enforcement of liabilities declared by s. 72. The liability declared by section 72 is for loss, destruction or deterioration. Failure to deliver is the consequence of loss, destruction or deterioration of goods. It does not furnish a cause of action on which a suit may lie against the railway administration, distinct from a cause of action for loss or destruction. By the use of the expressions, 'loss, destruction or deterioration', what is contemplated is loss or destruction or deterioration of the goods and the consequent loss to the owner thereof. If because of negligence or inadvertence or even wrongful act on the part of the employees of the railway administration, goods consigned for carriage are lost, destroyed or deteriorated, the railway administration is guilty of failing to take the degree of care which is prescribed by section 72 of the Railways Act.

There are undoubtedly two damage articles, Arts. 34 and 35 in the first schedule of the Indian Limitation Act, dealing with limitation for suits for compensation against carriers. Article 34 prescribes the period of limitation for suits against a carrier for compensation against loss or injury to goods and Article 35 prescribes the period of limitation for suits for compensation against a carrier for non-delivery or delay in delivering the goods. The period of limitation under each of these articles is one year but the point of time from which that period is to be

1941  
LAW  
SCHEDULE  
COMPENSATION  
AGAINST CARRIERS  
OF GOODS  
ART. 34  
ART. 35



# SUPREME COURT

## APPELLATE CIVIL.

Before the Hon'ble Mr. Justice Kapur and the Hon'ble  
Mr. Justice Shah

MISSRS. JETHANAND AND SONS (Appellants)

vs.

STATE OF UTTAR PRADESH (Respondent)

[ON APPEAL FROM THE HIGH COURT AT ALLAHABAD]

*with  
summary.*

**Appeal to Supreme Court.**—Order of remand for de novo trial, whether subject to and by for appeal.—Constitution of India, 1950 Article 199(1)(c)—Code of Civil Procedure, 1908, s. 520(1)(c).

An order of remand for de novo trial is not a judgment, since its final order nullifies the meaning of Article 199 of the Constitution such as, therefore, inapplicable to the Supreme Court. The inconsistency (in the history of the Order) between s. 109 of the Code of Civil Procedure and Article 199 of the Constitution was removed by the Civil Procedure Code Amendment Act, 1955. But even before the Amendment Act, the provisions under the Code being expressly made subservient to those in the Constitution, the provision was in effect, the same.

The observations of the High Court on a point remanded for de novo trial would not be binding in the de novo trial and not be that to raise a question of law of great public or private importance so as to justify a reconsideration of issues for appeal to Supreme Court under Article 199(1)(c) of the Constitution.

High Court's certiorari of decree for appeal to Supreme Court rejected and appeal dismissed.

*P. M. Abdul Rahman v. D. K. Ganan* is here (c) referred to.

Civil Appeals Nos. 481 to 483 of 1957 from the judgment and order, dated the 12th February, 1955, of the Allahabad High Court (Lucknow Bench) at Lucknow in P. A. P. O. Nos. 11 to 13 of 1955.

The facts appear in the judgment.

*J. B. Dadarkar, Advocate of Messrs. Rajinder Narain and Co. for the appellants (in all the appeals).*

1. **Introduction**  
 2. **Background**  
 3. **Methodology**  
 4. **Results**  
 5. **Conclusion**  
 6. **References**



appeals to appear before him at the time fixed in the orders. The appellants by their lawyers dated May, 12, 1935, declined to submit to the jurisdiction of the Superintending Engineer, and informed him that if he held and determined the cases *ex parte*, the "decisions will not be binding" on them. On February 7, 1935, the Superintending Engineer made and published three awards in respect of the disputes arising under the three contracts and filed the same in the court of the Civil Judge, Lucknow. The appellants applied for setting aside the awards alleging that the contracts were fully performed and that the disputes alleged by the State of Uttar Pradesh to have arisen out of the contracts could not arise after the contracts were fully performed and that the State could not refer those alleged disputes to arbitration. They also contended that the awards were not valid *in law* because on the arbitration agreement, action was not taken under s. 30 of the Arbitration Act. The Civil Judge, Lucknow, held that the disputes between the parties were properly referred to the Superintending Engineer by the State of Uttar Pradesh and that the awards were validly made. Against the orders passed by the Civil Judge, Lucknow, three appeals were preferred by the appellants to the High Court of Judicature at Allahabad.

The High Court on made the orders by the Civil Judge and remanded the cases to the Trial Judge with a direction that he to allow the appellants and if need be, the respondents to amend their pleadings, and frame all issues that arise out of the pleadings and allow the parties an opportunity to place such evidence as they desire and decide the case on such evidence. In the view of the High Court no proper notice of the filing of the awards was served upon the appellants and that they were "seriously handicapped in their rights in the course which had been adopted both by the court and the

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 ALBION  
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advantage in the conduct of the proceedings, as costs." On the applications filed by the appellants, the High Court granted leave to appeal to this court under Article 133(3)(i) of the Constitution, considering that the cases were fit for appeal to this court.

Consent for the respondents has signed that the High Court was incompetent to grant certificate under Article 133(3)(i) of the Constitution.

The order passed by the High Court, was manifestly passed in exercise of the inherent power to make such orders as may be necessary for the ends of justice as to prevent abuse of the process of the court. Under Article 133 of the Constitution, an appeal lies to this court from any judgment, decree or final order in a civil proceeding of a High Court if the High Court considers that

(a) .....

(b) ..... or

(c) "the case is a fit one for appeal to the Supreme Court"

In our view, the order remanding the case under s. 133 of the Civil Procedure Code is not a judgment, decree or final order within the meaning of Article 133 of the Constitution. If so order, the High Court did not decide any question relating to the rights of the parties to the dispute. The High Court merely remand of the case for (civil) holding that there was no proper trial of the persons filed by the appellants for setting aside the awards. Such an order remanding the case for retrial is not a final order within the meaning of Article 133(3)(i). An order is final if it amounts to a final decision relating to the rights of the parties in the case in the civil proceeding. If after the order, the civil proceeding will remain as be tried and the rights in dispute between the parties have to be determined,

the order is not a final order within the meaning of Article 113. The High Court assumed that a certificate of fitness to appeal to this court may be issued under section 109(1)(c) of the Code of Civil Procedure even if the order is not final and, in support of this view, they relied upon the judgment of the Judicial Committee of the Privy Council in *P. M. Abdul Rahman and others v. D. A. Cassim & Sons and another* (1). But section 109 of the Code is, now made expressly subject to Chapter IV, Part V of the Constitution and Article 113(3)(i) which states in that chapter authorises the grant of a certificate by the High Court only if the order is a final order. The inconsistency between section 109 Civil Procedure Code and Article 113 of the Constitution has now been removed by the Code of Civil Procedure (Amendment) Act 68 of 1955. But even before the amending Act, the power under s. 109(1)(c) being expressly made subject to the Constitution, an appeal lay to the Court only against judgments, decrees and final orders.

Again, the order passed by the High Court did not raise any question of great public or private importance. In the view of the High Court, the applications for setting aside the awards filed by the appellants were not properly made and therefore the cases deserved to be remanded to the court of first instance for trial *de novo*. The High Court granted leave to the parties to amend their pleadings, they also directed the Civil Judge to frame 'all the issues that arise and allow the parties an opportunity of adducing such evidence as they desired'. It was an order for trial *de novo* on fresh pleadings and on all issues that may arise on the pleadings. Evidently, any decision given by the High Court in the course of the order would not in that trial *de novo* be binding and the case will have to be tried afresh by the Civil

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Judge: The High Court was of the view that the interpretation of para. 3 of the first schedule of the Indian Arbitration Act raised a substantial question of law that by the direction of the High Court, this question was also left open to be tried before the Civil Judge. We fail to appreciate how an observation on a question which is directed to be raised can still be regarded as raising a question of law of great public or private importance justifying grant of a writ under Article 226(a)(i) of the Constitution.

We accordingly vacate the certificate granted by the High Court and dismiss these appeals with costs. One hearing fee.

*Appeal dismissed.*

## SUPREME COURT

—

## APPELLATE CRIMINAL

Before the Hon'ble Mr. Justice Tahir Razi and  
the Hon'ble Mr. Justice Kishan Dayal

TRELA AND OTHERS

v.

1961  
February 10

STATE OF UTTAR PRADESH

[ON APPEAL FROM THE HIGH COURT AT ALLAHABAD]

**Attachment of movable—Custody of goods attached—Attaching Officer exercising custody in respect of goods shown in the inventory of the debtor holder—Legality and nature of attachment's resumptionment of goods with one of them by the owner—Jurisdiction of the owner—Code of Civil Procedure: s. 132, r. 43 and r. 118 passed in Allahabad High Court—Indian Penal Code, s. 404, 434 and 45.**

Under r. 132 r. 43 and with r. 118 issued by the Allahabad High Court under the Code of Civil Procedure, it is empowered for the Attaching Officer to keep the goods in the custody of a holder and for the latter to transmit to the debtor holder. Detention would be such a case, by the holder of the goods and his possession would be on behalf of or in regard to the owner.

Where a property has been legally attached by a court, no person can pluck from the owner to the court or its agent. At the court during the attachment of attachment court to keep and retain legal possession of the property, he has collectively and cannot wrongful loss to the owner. He was, therefore, accused to obstruct removal of property and is punishable under r. 404 of the Penal Code.

*Emperor v. Ghans (1), overruled. Justice Singh v. Emperor (1) and Emperor v. Ghans (2) distinguished on the ground that the attachment in these cases was illegal.*

1961 All. R. 100 (1), 101. 1961 All. R. 100 (1), 101 (2).  
1961 All. R. 100 (1), 101.

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Criminal Appeals nos. 59 and 59 of 1959 from the judgments and orders, dated the 16th May 1959 of the Additional High Court in Criminal Appeal nos. 1024 of 1957.

The facts appear in the judgments.

4 S. R. Chaur, Senior Advocate (R. R. Garg & P. Singh, S. C. Agarwal and N. K. Ramani) the Advocates with him) for the appellants.

G. E. Mehta and C. P. Lal, Advocates for the respondents (for both the appeals).

The following judgment of the Court was delivered by—

SAHAI J.—These two appeals are directed against the judgment of the High Court of Judicature at Allahabad dismissing the appeal preferred by the appellants and maintaining the convictions and sentences imposed on them by the learned Sessions Judge Meerut, under sections 145, sections 149, sections 424, section 303, read with section 149, and sections 424, read with section 149, of the Indian Penal Code.

Briefly stated the case of the prosecution is as follows: One Hira Narain had obtained a decree from the court of the Additional Magist. Chhapra, against one Jagan Das Jaga for a sum of money. In execution of this decree the Magist issued a warrant for the attachment of the judgment-debtor's property. The owner to whom the said warrant was executed attached, into his, three buffaloes and two cows, which were in the house of the judgment-debtor, as his property. The owner kept the cattle in the custody of one Chhappa, the separator. As the said separator had no accommodation in his house for keeping the animals he kept them for the night in the enclosure of the decreeholder with his permission. The next day, at about 7 a.m., the same appellants, armed with knives, went to the enclosure of the decreeholder and began to seize two of the attached buffaloes. The decreeholder, his son and his nephew, protested

against the rest of the appellants whenever the appellants attack the three members of the house with knives and when P. W. 3 intervened, then struck him also with knives. Therefore, appellants 1, 2, and 3 took away the two bathlows followed by the other appellants.

The defense version is that on 12 June, 1999, at about 7 a.m., the first appellant, Tika, was talking his two brothers for granting when Her Master and 12 others came with the arms and forcibly searched the said Baidikhan, that when Tika objected to it, those 12 persons assaulted him with lathis, that when appellant a. Raja Ram, came there, he was also assaulted, and that Tika and Raja Ram used their lathis in self-defence.

The learned Sessions Judge, on a consideration of the evidence, held that the cattle were attacked on the evening of 31st Mar., 1935, and that, after their seizure, they were kept in the house of Har Mahon. The Sessions Judge disbelieved the defence version that the accused gave the beating to Har Mahon and others at 11 a.m. on 1st June, 1935, in self-defence. On that finding, he convicted the accused as aforesaid. On appeal, the learned Judge of the High Court accepted the finding arrived at by the learned Sessions Judge and confirmed the convictions and the sentences passed by him on the accused, but directed the various sentences to run concurrently. Hence the appellants have preferred these two appeals against the judgment of the High Court.

Learned counsel for the appellants relied before us on the following contentions: (i) The attachment of the bullflock was illegal and, therefore, the appellants in taking their own bullflock from the possession of the decretaholder did not commit any offence under section 424 of the Indian Penal Code. (ii) Even if the

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attachment was valid, neither the owner had any authority to keep the attached bullions in the custody of the superior, nor the superior had any power to keep them in the custody of the decree-holder, and therefore the decree-holder's possession was illegal and the appellants in taking away the bullions did not commit any offence within the meaning of sec. 424 of the Indian Penal Code. (g) The appellants also did not commit any offence under section 449 of the Indian Penal Code, as they had no intention to commit an offence or cause any injury to the decree-holder, but they entered the house of the decree-holder only to recover their bullions from a legal claim. (h) The appellants did not commit an offence under sections 342, and with sections 487 and 489 of the Indian Penal Code, as their common object was not to cause grievous hurt to the decree-holder and others, but was only to recover their bullions illegally detained by the decree-holder.

The last two contentions may be considered together. The material facts relevant to the said contentions may be stated. Har Narain in execution of his decree against Suresh Jogi reached the building that was in the house of the judgment-debtor. This appellant, filed a claim-petition—it is common case that subsequent to the incident his claim-petition was allowed. In the claim-petition, the High Court pointed out that this did not question the validity of the attachment but only set up his title to the bullions. Indeed, his defence in the criminal case also was not that the incident happened when the attached bullions were in the house of the decree-holder but that the incident took place before the attachment was effected. Before the Sessions Judge no point was taken on the basis of the illegality of the attachment. For the first time in the High Court a point was sought to be made on the



ground of the slapping of the attachment, but the learned judge required the respondent not only on the ground that such acts could be presumed to have been done spitefully, but also for the reason that the appeal from did not question the legality of the attachment as the claim-positions. That apart F.W. & the sons, was examined before the Sessions Judge. He deposed that he had attached the heads of cattle from the house of the judgment-debtor, Sundarl Jogi, and that he had prepared the attachment list. He further deposed that the warrant of attachment received by him was with him. A perusal of the cross-examinations of the witness disclosed that no question was put to him in regard to any defect either in the warrant of attachment or in the manner of effecting the attachment. In these circumstances, we must proceed on the assumption that the attachment had been validly made in strict compliance with all the requirements of law.

If so, the next question is, what is the effect of a valid attachment of movables? Order XXX, rule 49, of the Code of Civil Procedure describes the mode of attachment of movable properties other than agricultural produce in the possession of the judgment-debtor. It says that the attachment of such properties shall be made by the court officer, and the attaching officer shall keep the attached property in his own custody or in the custody of one of his subordnates and shall be responsible for the due custody thereof. The relevant rule framed by the Allahabad High Court in rule 11-B, which reads:

"Lost stock, which has been identified in connection with a decree shall ordinarily be left in the place where the abandonment is made either in custody of the judgment debtor or his furnishing security, or in that of some third-party or other respectable person with or without the responsibility of the

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custody and to produce it when required by the court.

The alleged rule does empower the arresting officer to keep the persons arrested in the custody of a sepai or any other respectable person. According to usual usage, custody is change of possession from the possessor before to the court, and the rule deals only with the custody of the arresting officer to the court. Whether the court keeps the husband in his custody or commits them to a sepai, the possession of the man or the sepai is in line the possession of the court; and as long as the husband is so, and the possession of the court continues to follow. Would it make any difference in the legal position if the sepai or his co-venturer or one of several, keeps the said woman with a responsible third party? In law, the said third party would be a bailee of the woman. Would it make no difference in law when the bailee happens to be the decree-holder? Obviously it cannot, for the decree-holder's custody is not in his capacity as decree-holder, but only as the bailee of the sepai. We, therefore, hold that the decree-holder's possession of the husband in the present case was only as a bailee of the sepai.

But it is said that even on that assumption, appellants, being the owner of the husband, was not guilty of an offence under section 404 of the Indian Penal Code, as he could not have acted dishonestly in trying to remove his husband in their owner from the custody of the court's officer or his bailee. This argument turns upon the provisions of section 404 of the Indian Penal Code. The material part of section 404 of the said Code reads:

"Whoever dishonestly or fraudulently removes any property of himself or any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

The necessary condition for the application of this section is that the removal should have been made dishonestly or unlawfully. Under section 24 of the Indian Penal Code, "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing 'dishonestly'." Section 25 defines 'wrongful gain' and 'wrongful loss'. "Wrongful gain" is defined as gain by unlawful means of property to which the person gaining is not legally entitled; and "wrongful loss" is the loss by unlawful means of property to which the person losing is legally entitled. Would the owner of a thing or one's officials have the intention of causing wrongful gain or wrongful loss within the meaning of section 24 of the Indian Penal Code? When an attachment is made, the legal possession of a thing attached vests in the court. So long as the attachment lasts or the claim of a person for the thing attached is not allowed, that person is not legally entitled to get possession of the thing attached. If he unlawfully takes possession of that property to which he is not entitled he would be making a wrongful gain within the meaning of that section. So too, till the attachment lasts the court or its officers are legally entitled to be in possession of the thing attached. If the owner removes it by unlawful means, he is certainly causing wrongful loss to the court or its officers, as the case may be, within the meaning of the words 'wrongful loss'. In the present case when the owner of the buffaloes removed them unlawfully from the possession of the decree-holder (the holder of the *ajudicata*), he definitely caused wrongful gain to himself and wrongful loss to the court. In this view, we must hold that appellants dishonestly removed the buffaloes within the meaning of section 24 of the Indian Penal Code and, therefore, he was guilty under that section.

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Now we shall proceed to consider some of the facts now cited in the file in support of the contention that under no circumstances the owner of a thing would be guilty of an offence under section 414 of the Indian Penal Code, if he removed it from an officer of a court even if he was in possession of it under a legal title or right.

Reference is placed upon the decision of the Court of Criminal Appeal in *Rex v. Thomas Joseph* (1), where a prisoner the owner of the goods, took them away from the possession of the Sheriff's officers, the court held that the prisoner was not guilty of larceny. "Larceny is the civil and wrongful taking away of the goods of another against his consent and with intent to deprive him permanently of his property." There are numerous differences between the concepts of larceny and that of theft, one of them being that under larceny the stolen property must be the property of someone whereas under theft it must be in the possession of someone. It would be inappropriate to apply the definition relating to larceny to an offence constituting theft as dishonestly to fraudulently removal of property under the Indian Penal Code for the ingredients of the offences are different. In *Jaffer Singh v. Emperor* (12, supra.) I held that "the mere fact that the judgment-debtor, who is entitled to remove his crops which are not validly attached, has removed them does not prove that he has done so dishonestly." There the attachment was made in derogation of the provisions of Order XXI rule 44, Civil Procedure Code, and the Court held that the attachment was illegal and, therefore, the property would not pass from the judgment-debtor to the court. It further held that under such circumstances the court could not presume that the act of removal was done dishonestly within the meaning of section 414, I. P. C. This decision does not

(1) 1877, 15 T. L. R. 39.

(12) 1882, 4, 1, 1, 3, 1000.

help the appellants, as in the present case the attachment was legal. See, *J.*, in *Amperer v. Gnan* (i), went to the extent of holding that the owner cutting and removing a portion of the crops under attachment in execution of a decree was in the custody of a stolen and yet constitute an offence under section 404 Indian Penal Code. The learned Judge observed at page 116:

If they were the owners of the crop and removed the same, their conduct was neither dishonest nor fraudulent.

The learned Judge ignored the circumstance that the attachment of the crops had the legal effect of putting them in the possession of the court. For the reasons given by us earlier, we must hold that the case was enough decided. In *Amperer v. Gnan* (i), *PILLAI, J.* held that the owner by removing the attached property from the possession of the custodian and taking it into his own use did not commit an offence under section 404 Indian Penal Code. But in that case also the attachment was illegal.

But there is a number of judicial opinions holding that where there was a legal attachment, a third party claiming to be the owner of the movables attached would be guilty of an offence under section 404 or section 479, Indian Penal Code, as the case may be, if he removed them from the possession of the court or its agent.

Where a revenue court had attached certain plots and certain persons were appointed as custodians of the crop standing on the plots and accused cut and removed the crop in spite of knowledge of the prohibition of the order of attachment, the Allahabad High Court held in *Dalgaopur v. State* (2) that the removal of the crop by the accused was dishonest and thus the conviction of the accused under section 479, Indian Penal

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Code, was proper. The learned Judge said: "were the provisions passed from the accused to the goods, the raising of the trap in the accused's hand, was dishonest." In *State v. Bawa* (11) the Rajasthan High Court held that where a person takes away the attached property from the possession of the respondent, in whom it is entrusted, without his consent, and with the knowledge that the property has been attached by the order of a court, he will be guilty of committing theft, even though he happens to be the owner of the property. Though this was a case under section 372 Indian Penal Code, the learned Judge considered the scope of the word 'dishonestly' in section 378 which is also one of the ingredients of the offence under section 414, Indian Penal Code. *Warren* (C. J.) observed at page 775, 1981:

"There is no doubt that loss of property was caused to Dusharman inasmuch as he was made to lose the articles. There is also no doubt that Dusharman was legally entitled to keep the articles in his possession as they were entrusted to him. The only question is whether this loss was caused to Dusharman by dishonest means. It is to our mind obvious that the loss in this case was caused by dishonest means because a man never be lawful for a person, even if he is the owner of an article, to take it away after attachment from the person in whom it is entrusted without recourse to the court under whose order that attachment has been made."

These observations apply with equal force to the present case. A division bench of the Allahabad High Court, in *Inspector v. Kanda* (12) considered the meaning of the word "dishonestly" in the context of a theft of

(11) 1981 11 B. L. R. 379.

(12) 1981 11 B. L. R. 381.







irregularity in the charge, unless such error, omission or irregularity has in fact occasioned a failure of justice. The question, therefore, is whether the alleged defect in the charge has in fact occasioned a failure of justice. The accused knew from the beginning the case they had to meet. The prosecution adduced evidence to prove that the accused armed themselves with belts and entered the premises of the depositee-holder to recover their cattle and gave belts blown up the windows of the house causing thereby serious injuries to them. Accused had ample opportunity to meet that case. Both the courts below analysed the evidence and convicted the accused under section 305, read with section 149, Indian Penal Code. The evidence leaves no room or doubt that the accused had knowledge that previous fight was likely to be caused in the rooms of the depositee-holder's house in prosecution of their common object, namely, to recover their cattle. We are of the opinion that there is no failure of justice in the case and that no case has been made out for interference.

No other point was raised before us. In the result, the appeals fail and are dismissed.

*Appeals dismissed.*

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## SUPREME COURT

## APPELLATE CIVIL

*Before the Hon'ble Mr. Justice Gopabandhu Das and the  
Hon'ble Mr. Justice Das Gupta*

**LALA PRASAD and others (Appellants)**

vs

<sup>(1st  
defendant)</sup> **LALA JUMNA PRASAD and others (Respondents)**

10th APPEAL FROM THE HIGH COURT AT CALCUTTA

*Execution of Decree for partition in favour of a joint Hindu family including sons—1951—Laws for the subject are passed during months of immolation—Immolation (1951), s. 7—Code of Civil Procedure, 1908 (CXXII), ss. 5 and 7.*

The word 'discharge' in s. 7 of the Immolation Act is not limited to discharge of monetary claims only but covers discharge or satisfaction of all other liabilities, e.g. taking possession of property.

The managing members of a joint Hindu family can give a valid discharge of liability under a partition decree by accepting delivery of possession in behalf of his minor sons and therefore, they would not require all the members of the joint family from the date of the decree. The limitation to discharge lay in partition of land under s. 17, XGG, or s. 5 and 7 of the Code of Civil Procedure has no application in such case.

Case law discussed.

Civil Appeal nos. 196 of 1958 from a judgment and decree dated the 14th October, 1952 of the Allahabad High Court in Executive First Appeal no. 104 of 1951.

The facts appear in the judgment.

S. P. Sinha, Senior Advocate (Tirupati Narayan Advaitdas with him) for the appellants.

G. C. Mishra, Advocate for respondents, no. 1.

The following judgments of the Court was delivered by—

DAK GATTA, J.—This appeal raises a question of limitation in execution proceedings. The decree sought to be enforced was made by the Civil Judge, Rampur, on 22nd September, 1934, in a suit for partition brought by two brothers, Jivana Prasad and Deva Prasad and two minor sons of Jivana Prasad, against Gajga Lal, his son Jasula Prasad, the four minor sons of Jasula Prasad—Sharda Prasad, Dhanraj Pal, Ravi Pal and Krishna Pal, and one Smt. Sundari. By the decree one of the properties, a house known as bearing no 367a and now 3173k, Etawa Bazar, Rampur, was awarded along with other properties to the defendants in the suit. The petition application for execution was made by the four brothers, Sharda Prasad, Dhanraj Pal, Ravi Pal and Krishna Pal on 29th November, 1942. The prayer was that these applicants may be delivered possession over this Etawa Bazar house along with Gajga Lal, Jasula Prasad and Smt. Sundari on disavowal of Jivana Prasad and Deva Prasad. It is stated in the application that all these applicants had "up till now been minors and one of them is still a minor and so no question is raised of time limit." This, it is important to note, was the first application for execution of the partition decree.

A number of objections were raised, but the principal objection and the only one with which we are concerned in this appeal was that the application was barred by time. The decision of this question depended on the answer to the question raised on behalf of the oppositors that Jasula Prasad one of the persons cited jointly with these applicants to make an application for the execution of the decree could have given a discharge of the liability under the decree without the concurrence of his minor sons and so time ran under section 2 of the Limitation Act against them also from the date of the decree.

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The Trial Court did not feel satisfied that Jewish  
Prison could give a valid discharge and held accordingly  
that the application was without effect.

On appeal the High Court held that Jewish Prison is  
the Rector of the House of the Holy Trinity could not on behalf  
of the entire joint family in taking possession of the  
house claimed by the defendants and delivery of such  
possession could discharge the liability, and the court  
joint family and held accordingly that the application  
was barred by limitation. The High Court has even  
granted a writ under Article 111(5) of the Consti-  
tution and on that certificate the appeal has been filed  
by the applicants for execution.

Two contentions were raised on behalf of the appel-  
lants in support of the plea that the High Court erred  
in holding that the application for execution was barred  
by limitation. First, it is urged that section 7 of the  
Limitation Act does not apply at all to a permissive decree.  
The second contention is that in any case Jewish Prison  
could not give a valid discharge of the liability under  
the decree in view of the provisions of Order 21 of  
the Code of Civil Procedure.

On the first contention the argument is that the word  
'discharge' is appropriate only in respect of a money  
claim and is wholly inappropriate in respect of an  
order for possession whether on purchase or otherwise.  
There is, in our opinion, no substance in this argument.  
The mere fact that the two illustrations to section 7 are  
in respect of debts is no ground for thinking that the  
provisions of section 7 are limited to suits or decrees on  
monetary claims only. Nor can we see any reason to  
think that the word "discharge" can refer only to debts.  
Discharge means, in free from liability. The liability  
may be in respect of monetary claims, like debt; it may  
be in respect of possession of property; it may be in re-  
spect of taking some action as regards property; it may



family property. Clearly, therefore, when in respect of a transaction of property possession has to be effected by the several members of the family, it is the family duty and power to take possession on behalf of the entire family including himself, the members of the family who are not joint as well as those who are not joint.

When any minor member of a joint family is a party to a proceeding in a court he has however, to be represented by a next friend appointed by the court and where somebody other than the managing member of the family has been appointed a guardian ad litem there might be difficulty in the way of the managing member giving a discharge on behalf of the minor. Where however the managing member himself is the guardian ad litem the only difficulty in the way of action being taken by him on behalf of a minor is to the extent it is mentioned in Order 32, rr 3 and 7. In *Gurchara Ram v. Tuljaram Rao* (5) the Judicial Committee pointed out that,

"No doubt a father or managing member of a joint Hindu family may, under certain circumstances and subject to certain conditions, enter into agreements which may be binding on the minor members of the family. But when a minor is party to a suit and a next friend or guardian has been appointed to look after the rights and interests of the minor in and concerning the suit, the acts of such next friend or guardian are subject to the control of the Court."

In this case their Lordships held that in view of the provisions of section 416 of the then Code of Civil Procedure (which corresponds to Order 32, rule 7 of the present Civil Procedure Code) the managing member who had been appointed a guardian in the suit had no

authority to enter into any compromise or agreement purporting to bind the minor. This principle has been applied also to cases where the provisions of Order 32, rule 5, would apply and so it has been held in numerous cases in India that the Karta of a Hindu joint family though guardian to the suit cannot give a valid discharge in respect of a claim or a decree for "money, or other movable property." (*Parameshwar Singh v. Ramji Singh* (1) and *Lachman Chetty v. Subbiah Chetty* (2)).

In the present case however there is no scope for the application of either the provisions of Order 32, rule 5 or Order 32, rule 7 of the Code of Civil Procedure. Neither is this a case of a receipt of any money or movable properties, nor is there any question of entering into an agreement or compromise on behalf of the minor. For, clearly acceptance of delivery of possession of property, as terms of the decree, in a partition suit (as by no stretch of imagination be considered as entering into any "agreement or compromise.")

We are therefore of the opinion that Jashu Prasad, the managing member of the family could have given a discharge of the liability under the partition decree by accepting delivery of possession on behalf of his minor sons, without their consent and so time ran against them also under section 7 of the Limitation Act from the date of the decree. The High Court was therefore right in its conclusion that the application for execution was barred by limitation.

The appeal is accordingly dismissed with costs.

*Appeal dismissed.*

## APPELLATE CRIMINAL.

*Before the Justice Mulla and His Justice "Nigam"*

## STATE.

v.

191.  
Part II.

RAM BULACH AND OTHERS.

**Indian Penal Code, sec. 4, 19th, and Code of Criminal Procedure, 1898, s. 107—Code of Civil Procedure, 1899, Indian Penal Code, sec. 491—Section contained in the Contempting Judge's proceedings against the accused as one of their will today as in able—Section Judge against the accused of other along Justice against the accused for the first time of the trial—Section against of such evidence justified.**

*Notes.* The Legislature amended the Code of Criminal Procedure only to speed up the Contempting proceedings and not to lessen the degree of proof which was considered necessary for the trial except was justified in finding—Section 491, the abolition of those offences who have not testified in the Contempting Proceedings's case.

**Indian Penal Code, s. 491—Abolition of property can not be placed on the trial because is abolition of a person. The owner is well acquainted with the trial article and trial though possibly they may be an discovery mark, as shown our very frequently, he cannot be put up his own article from a large number of similar articles.**

The rule laid down in *Lalla Singh's case* (p) is not applicable to the abolition of property.

*Abolition of Code (p) can approved.*

Criminal Appeal no. 103 of 1904 filed by the Government against the order of Frying Narayan, Civil and Sessions Judge (Muzaffargarh) of Lahore.

The facts appear in the judgment.

*S. B. Mulla, for State.*

*K. A. Gopal, C. P. John and B. P. Arora, for accused nos. 1, 4, 7, 13 and 14.*

*Ram for Friend, for accused nos. 1, 2, 3, 5, 10 and 11.*

*J. S. Thandi, for accused nos. 9 and 12.*

1904 Appeal no. 103 of 1904, decided on 19th Jan. 1905.  
1905 L.L.R., 1905 120  
Appeal in Criminal 100



C. P. Code, for amended no. 9.

The Judgment of the Court was delivered by—

MR JUSTICE J.—This is an appeal filed by the State in a theory case. The Additional Sessions Judge of Nagpur required the accused accused respondents, who were prosecuted under section 398 Indian Penal Code, that the decision against the State and it has filed this appeal.

The main ground on which the trial Court required the accused respondents was that only two witnesses were examined before the examining Magistrate and the identification by one of these witnesses was totally unreliable. It appeared to take into consideration the identification by the other witnesses who were produced for the first time before the trial court in view of a Division Bench decision of this Court in *Lalla Singh v. The State* (1). The Division Bench consisted of Mr. Justice Jais and one of us and the decision was delivered by Mr. Justice Jais. One of us who sat on that Bench concurred with that decision. It observed in that decision—

No witness of identification can be deemed reliable unless he is found to consistently identify an accused person in the jail and in the courts of the examining Magistrate and Sessions Judge, and day-to-day experience shows that not unlikely, a witness identifies a person in the jail and in the Sessions Court, but fails to do so in the Magistrate's Court, with the result that his evidence is necessarily rejected. No doubt the amended Code of Criminal Procedure does not compel the prosecution to examine every witness in Magistrate's Court nevertheless the prosecution takes a big risk by withholding from examining Magistrate's Court

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It seems that this view was accepted in several elections and then later on a contrary view was expressed and what is extraordinary about it is that this contrary view was also expressed in the same judge whose view has been cited above. It is all the more amazing that when the learned judge gave a contradictory view, he did not refer to the earlier view expressed by him and did not indicate that for some reason the earlier view was not correct and he had changed his view. This view was expressed in *Archer v. The State* (1). The counsel for the accused in this case had contended that if an identifying witness is not produced in the Magistrate's court then the defence loses the reasonable possibility of an ordering the subsequent identification before the trial court by his failure to do so before the committing Magistrate. The learned judge in *Archer's* case (1) considered this argument and observed (p. 107)

"The argument is plausible and merits consideration. Now, the accused has a right to use a witness in his defence before the committing Magistrate for cross-examining him, and this right cannot be abridged, provided the legislature itself does not decide otherwise. But what has the legislature





is our opinion no question of law arises. The converse, if there is one in this Court, is not with regard to the right of the prosecution, whether or not to examine witnesses of identification in the examining court, but only with regard to the value due to be attached to the evidence of witnesses of identification who have not been examined in the examining court. There can be no hard and fast rule in a matter like this and every case has got to be judged on the circumstances and on the facts of its own case. Whether or not a particular person should be believed because he has not been examined in the examining court, cannot be a question of law. Consequently, we do not think it necessary to refer either this case or any question arising in this case to a Full Bench. We direct that this appeal shall be heard on merits by a Division Bench of this Court.\*

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This order was passed on the 2nd of February, 1961, and *Cryder's* case was decided on the 14th of February, 1961, and it is one of the Divisional Bench cases referred to above. The learned Judge observed in that case:

"The prosecution certainly has a right to refuse to examine all the witnesses in the case of the examining Magistrate. We must however emphasise that the evidence of identification has always been considered a weak kind of evidence. That is why the courts are very reluctant to convict solely on one identification. In order to ensure the court that this evidence is reliable it is desirable that a witness should be separately asked to identify the person he had seen at the time of the offence.

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State v. The State (5)

State v. State (6)

State v. State (7)

Mohammed Omar v. The State (8)

State v. State (9)

It is not necessary to quote extracts from every one of  
 these decisions, but we would like to cite a passage from  
 Remonstrance v. The State (4), which runs as follows:

"It would then be seen that the weight of evidence  
 was not in favour of the view expressed in  
 Remonstrance's case (1) but against it. But there is  
 another approach to the question. The English  
 courts cannot take away the rights of the owners of  
 the property. So far the definition of the word  
 'property' as the Indian Evidence Act has not  
 been changed by the Legislature. The definition  
 now of 'property' means that it is used in the proof  
 of what other considering the matters before  
 it the Court either believes it to mean or

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considers its content so probable that a prudent man ought, under the circumstances of the particular case to act upon the supposition that it exists". That definition makes it clear that a prudent approach is to be made and that it commits the province of law courts to determine what is a prudent approach and what is an imprudent approach. As an instance, there is nothing in law that says that when an accused is put for identification he should be mixed up with so many undertrials in order to make the test acceptable. The High Court, however, asserting the rule of prudence and caution has observed "in several decisions that where there are not only one or two suspects, as least ten undertrials should be mixed with each suspect. Where this direction given by the High Court is not observed, the High Court has not accepted the results of identification. In other words, what should be the approach of prudence is not a question of statute but a question in which the High Court formulates its own approach and its own rules. Therefore, where the High Court does not accept the identification made by a witness at the trial court, unless that identification is also supplemented by an earlier identification in the Commencing Magistrate's court, it is really not a question of interpreting the statute but observing a rule of caution. The terminology of the amended section 207 A, Criminal Procedure Code, is, therefore quite irrelevant in deciding this question and even if it is permissible under the terminology of that section the results would still be suspect under the rule of prudence and caution. In *Shahji's case*, (1) with all respect to the learned Judge, only an attempt was made to interpret the words of section 207 A Criminal Procedure Code and what I have observed above was

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are introduced. In my opinion the two last-mentioned rules to speed up and simplify the procedure and not to lessen the degree of proof, but the prosecuting agency assumes *prima facie* purpose and is showing it by suppressing material evidence.

It is, therefore, for the High Court to give directions of procedure and evidence for the prosecuting agency cannot be permitted to interpret the provisions of section 104 as an excuse for not presenting the evidence in such a manner that it may create confidence in the mind of a prudent man. I am, therefore, of the opinion that where the circumstances are such from which a reasonable inference can be drawn that a witness has suppressed, all because the prosecution did not want to subject him to be tested in that way, the rule of procedure demands that the evidence of that witness should not be accepted."

In case of the current case above it is not necessary to deal with this matter any further. We agree with the view first expressed in *Lalla Singh's case* (i) and then followed by so many decisions. The trial court is a division, justified in being doubtful about the identification of those witnesses who were not examined in the committing Magistrate's Court. If those witnesses are ignored only two witnesses remain and both these witnesses are wholly unreliable.

The trial court found Daryan as the credible person as he remained in some position but it found that P.V. a brother was a good witness, but it would not be safe to base a conviction on the statements of a solitary witness. The performance of Daryan was that in the first para he identified five persons correctly and made six mistakes. In the second para he identified two persons correctly and made seven mistakes. In the third para he identified a suspect correctly and made six

<sup>1</sup> The Appeal was set at 26 January 1911 (see 1911).







Maynander (P.W.-11) has stated that it is blue, while the complainant Dargun has stated that it is green. I have carefully seen the shawl, and I consider that the colour is something like slate colour, and in the experience of this Court, this Court has found numerous persons calling this colour green. Coupled with the evidence of identification by these witnesses, I would have considered the ownership of this shawl proved beyond reasonable doubt, specially as the accused could not produce any evidence about his own ownership, but in view of the fact that the evidence of identification has been rejected, I consider that the identity of the shawl is not established beyond reasonable doubt by its description in the F. I. R. alone."

We would at once compare our disagreement with the last observation of the learned cited above. In our opinion the description given in the first information report tallies completely with the article recovered and this slight discrepancy about the colour being green, blue or slaty is of no consequence at all. It is one of those cases where the description given in the list of stolen property is by itself sufficient in being sufficient to one's mind that the article exhibited in the court is the same article. The identity of the article is established by this description alone. It is one of those cases in which even an identification is not needed to satisfy a court that the property before it was stolen property, unless it felt a doubt that the list of stolen property was suspicious and relevant cannot be placed upon it. Over and above this, there was the identification by P.W.-11 (Dargun) which was more than enough to prove that this article belonged to Dargun and it was located in this dacoity. But we have also failed to appreciate the approach made by the trial court in placing the identification of property on the same footing as the

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identification of a person. The trial court, completely, agreed that identification of persons means recognizing the face of a stranger who was seen momentarily, such as the time of the shooting. The identification of property is not the recognition of property for the owner knows his own articles and when he sees them he picks them out. He is well acquainted with all the peculiarities of this article and even though ostensibly there may be no distinctive mark, an owner can very frequently be trained to pick out his own article from a large number of similar articles. There is some peculiarity in the article which is present on his sub-conscious mind and which he himself may not be able to describe. It was, therefore, left to place the identification of property on the same footing as the personal identification of an accused person. Apart from this we find that even if the rule was to be applied in this case the destruction of the property together with the identification by Justice was more than sufficient to prove that this article was stolen property. We, however, want to make it absolutely clear that the rule of law laid down in *Lalit Singh's* appeal and followed in the other cases is not applicable to the identification of property. We may mention that as far as identification of person is concerned, the courts have repeatedly held that as long as there are similar persons and commonly a large number of persons should be shown before the identification is held to be reliable. In the identification of property for which only two or three similar articles are shown and although it is desirable that a large number of similar articles should be shown, still the identification of property is not disallowed if the witnesses are credible and they have been subjected to a fair test merely because the similar articles shown were only two or three in number. This is only to illustrate that the identification of property stands on a different footing

than the identification of persons. The trial court, therefore, misdirected itself when it followed the principle laid down in *Lalla Singh's* case (i) and applied it to the identification of property.

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We, therefore, find that a case under section 412 Indian Penal Code is satisfactorily established against Raza Bida accused/respondent.

The result is that we uphold the order of acquittal passed by the trial court in favour of all the accused respondents under section 401 Indian Penal Code and we also maintain the order of acquittal passed by the trial court in favour of Shanti and Vaidya under section 412 Indian Penal Code. We, however, find that a case under section 412 Indian Penal Code is made out against Raza Bida; as the stolen property was recovered from him only about three days after the commission of the offence. We, therefore, set aside the acquittal of Raza Bida under section 412 Indian Penal Code and convict him under that section. We award him a sentence of five years rigorous imprisonment under section 412 Indian Penal Code. All the accused respondents, except Panna, Ramesh and Mulla, too are bad. Ramesh and Vaidya we are informed, are in jail in connection with some other offence. If this is true, they should not be released, but so far as this case is concerned, they are required and they are entitled to be released, unless wanted in connection with some other case. Panna should be released forthwith, unless wanted in some other case. Raza Bida should surrender forthwith to set at rest the sentence imposed upon him under. The bad friends of the other accused respondents are discharged.

No further orders are necessary on Criminal Miscellaneous Application no. 22 of 1941.

*Appeal partly allowed.*

10/11/41 Appeal no. 22 of 41 decided on 1/12/41.

## (FULL BENCH) APPELLATE CIVIL

Before the Hon'ble M. C. Sena, Chief Justice, (A);  
Justice Mukerjee and Mr. Justice Dasgupta

BANGATE CHAUREY (Appellant)

vs.  
NGL LTD.

vs.

RAM ADHAR CHAUREY (Respondent)

**Order of maintenance order.**—Under s. 35 of U. P. Land Revenue Act, 1901, the compromise application of the parties, if embodied in a clear petition of compromise.

The questions that arose for determination were firstly, whether in the instant case the order of maintenance was embodied in a petition of compromise affecting considerable proprietary worth more than Rs. 500 which purports to regulate the future rights of the parties in the property, secondly, whether the petition of compromise having been embodied in the order, becomes enforceable and thirdly whether the compromise embodied by the order is conclusive and binding upon the parties.

The issues held:—

(1) that the word 'approved' written on the compromise application suggests that the Sub-Divisional Officer only granted the order, especially when he is, the application, the express purpose being that the matter of the petition should be referred over specified properties.

(2) that the order should be deemed to refer to and embody only those portions of the compromise which specified the properties, it cannot be held to refer to and embody those portions of the compromise which declared the parties to be sharing equally, nor could it be assumed that the Sub-Divisional Officer who had no power to decide property rights, promissory 'interposition' there in his order.

(3) that since the order is ambiguous it must be presumed that it is deemed when the Sub-Divisional Officer was asked to do and what he would lawfully do.

(4) that the order of the magistrate court did not embody the part of the compromise application which declared the parties to be sharing equally.

(5) that in view of the confusion in the key questions the order questions become moot and it was not necessary to express opinion on them in this case.

Case law discussed.







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unable, the parties and the terms of compromise, and the lot of property. The plaintiff varies the claim of each party to the estate, and then declares that with a view to settle various disputes they have settled their differences and have arrived at a compromise through good counsel of their relatives. There is then a prayer that the case should be decided and the names of the parties should be mutated in accordance with the compromise. There then follow two clauses, (i) the name of the appellant should be mutated over the said property. In the sentence following it is declared that over this property, he would remain in possession as absolute owner, and that the respondents would have no concern with it, (ii) the name of the respondents should be mutated over the remaining property. In the next sentence it is then declared that he would possess it as absolute owner, and that the appellants would have no concern with it, either in present or in future. The list of property deals with it then mentioned in the application.

It is common ground that the property falling to the share of the appellant was worth more than Rs. 100. It is not disputed on behalf of the appellant and I think rightly that the compromise application required registration under clause (4) of subsection (1) of section 17 of the Registration Act, for it declared the parties to be absolute owners of their shares [See *Jagann v. Bishanhar Dahi* (1), *Ram Dopal v. Pula Ram* (2), *Mahabir Ram v. Padarath Chaur* (3)]. Not being registered it is ineffective and inadmissible as evidence.

The Sub-Divisional Officer, to whom the application was presented, passed a memorial order, 'approved', and thereafter the names of the parties were mutated in village records. The primary question is whether that order embodies the entire terms of the compromise application. An order which explicitly records the entire

(1) (1911) 4 A.L.J. 409. (2) (1911) 4 A.L.J. 409.  
 (3) (1911) 4 A.L.J. 409.

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compromise agreement, poses no problem. (See *Almeida v. Almeida*, 840 P.2d 1011, 1014 (N.M. 1992).) *Almeida* stands for the proposition that an order incorporating a compromise agreement is to what it does and what it omits to do. (See *Pratt v. Pratt*, 1992 WL 10040, 10041 (N.D. Cal. 1992).) In *Pratt*, the court held that the First Council and that the objection based on non-implementation of the compromise did not "apply to its stipulations and provisions in so far as those were incorporated with, and given effect to, by the order made upon it by the Subordinate Judge." On a close reading of the compromise and the order it was, however, found that the order did not refer to or narrate those terms of the compromise which related to property outside the sale. The Word "approved" suggests that the Sub Divisional Officer only granted the prayer exparte asked for in the compromise application, the exparte prayer being that the names of the parties should be mutated over specified properties. The order should, therefore, be deemed to refer to and embody only those provisions of the compromise which specified the properties. It cannot be made to refer to and embody those provisions of the compromise which declared the parties to be absolute owners. Neither was a request made to embody them in the order, nor can it be assumed that the Sub Divisional Officer, who had no power to decide property rights, gratuitously incorporated them in his order. Since the order is ambiguous, it must be presumed that it directed what he was asked to do and what he could lawfully do. I am, therefore, of opinion that his order did not embody that part of the compromise application which declared the parties to be absolute owners.

I, therefore, answer the first question formulated by me in the margin:

In view of my opinion on the first and second questions the other questions become moot, and it is not necessary to express opinion on them in this case.

The appeal accordingly fails and I dismiss it with costs.

Table 1.  $\beta$ -1-4 glycosidase

**Abstract.** — The authors present a new method for determining the age of *Lepomis microlophus*, based on analysis of otolith microstructure. The relationship between age and length was determined by comparing the results of the otolith microstructure analysis with those obtained from conventional ageing methods. The authors conclude that the otolith microstructure analysis provides a more reliable estimate of age than the conventional methods.



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1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

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**Abstract**

## (FULL BENCH) CIVIL MISCELLANEOUS

*Before Mr. Justice Bhagwati, Mr. Justice Upadhyay  
and Mr. Justice J. Lalit*

RAJA JAGDAMBA PRATAP SARAIN SINGH  
(Petitioner)

v

COMMISSIONER OF INCOME TAX, U. P.  
LITIGANT OR OTHER (RESPONDENT)

*Indian Income Tax Act, 1922, s. 4—Income payable on  
insurance compensation—Bonds by State Government of  
income to additional compensation not liable to tax as  
income from security or from other source—Bonds to tax—  
C. P. Sarin v. Shriyama and Laxmi Narayan Das, 1955  
sc 47, 48, 49, 50, 51 and 52; 49, 50, 51 and 52.*

The question that arose for determination on the first point was, whether the income payable on insurance compensation bonds by the State Government is liable for capital or income tax if additional compensation not liable to income tax, or that it is income from securities or from other sources and as such a revenue receipt which is liable to income tax.

The court also considered the issue—

*First, if the interest paid under the name of insurance compensation bonds of the nature of compensation is exempted for tax on the basis of a receipt for the use that the Government makes of the money under the law deemed to be belonging to the Government.*

*Second, if the bonds which are paid in interest on the compensation bonds are not compensation.*

*Third, that the compensation bonds cannot be held to be the receipt because, within the meaning of the Indian Income Tax Act.*

*Fourth, that the compensation bonds which are, on the basis of payment, paid are fully covered by the definition given in sub-s. (v) of s. 4 of the Indian Income Tax Act.*

*Fifth, if there was some difficulty (though there was not) in holding that the interest on compensation bonds issued to the petitioner is not exempt on securities it would not be available for use in income from other sources.*

*Sixth, that the issue of interest on the compensation bonds are liable to be charged as income tax.*

*Order allowed.*

Civil Miscellaneous Writ No. 1203 of 1938.

The facts appear in the judgment.

R. J. Mune and P. P. Mune for the petitioner.

Govind Behari for the opposite-party No. 1 and Mune  
Wazir Ahmad (Senior Standing Counsel) for the State.

The judgment of the Court was delivered by—

J. SETH, J. —The petitioner Raja Jagdishbhai Prasad Narain Singh was the proprietor of what was known as the Anandpura Raj before the abolition of Zamindari in this State. He held large properties in the districts of Faizabad, Gorakhpur and Dehra Banki. As a consequence of the abolition of zamindari in this State his properties vested in the State of U. P., and the petitioner received by way of compensation for the acquisition of his rights in those properties certain government bonds during the period 1954 to 1958. The bonds are of a self-liquidating nature and the payments under them is spread over a period of forty years. They carry interest at 4½ per cent per annum on the principal amount, and are payable in forty equal instalments. The scheme of payment is that the interest for the whole year plus a part of the principal is paid every year. As the interest goes on decreasing due to the part payment of the principal every year, the amount of principal included in the instalment goes on increasing. The petitioner, as required by the rules, presented his bonds for realisation of instalments before the Income Tax Officer, Faizabad. The latter under the directions of the revenue authorities deducted large sums by way of income tax from the amount of interest which was included in the instalments due to be paid to the petitioner. The petitioner objected to the realisation of this amount, and made an application to the Income Tax Officer asking therein that the deduction made was illegal. The Income Tax Officer on 13rd of

1961  
Raja  
Jagdishbhai  
Prasad  
Narain  
Singh  
vs.  
Government of  
U. P.,  
Lucknow



movements be raised commencing the respondents to reduce the sum of Rs.48,726 already defunct as income tax from the petitioner's compensation. There is also a prayer for the issue of a writ of certiorari quashing the assessment order, dated 30th October, 1937. In the end, there is the usual prayer for the issue of any other writ, order or direction as this Court may in the circumstances of the case deem fit and proper to issue.

On behalf of the respondents a common-affidavit has been filed which is sworn by Mr. Mulla Ahmad Bermani, Income Tax Officer, Faizabad, and a rejoinder affidavit has been filed on behalf of the petitioner sworn by Mr. Lal Narayan Singh the Mukhtaram of the petitioner. It is really not necessary to narrate all the allegations made in the petition, the affidavit, the common affidavit and the rejoinder affidavit because the question requiring decision is a short one and is primarily a question of law.

The petitioner's case is that, though called by the name of income, the additional amount that is being paid to him over the compensation amount is really not income or revenue but is additional compensation. The case of the respondents, on the other hand, is that it is income from securities, or from 'other sources' and as such a revenue receipt which is liable to be taxed. In order to understand the exact nature of the payment over which there is controversy between the parties, it is necessary to consider some of the provisions of the U. P. Landlord Abolition and Land Reforms Act (hereinafter referred to as the Act). Section 27 of the Act reads as follows:

"Every intermediary whose rights, title or interest in any estate are acquired under the provisions of this Act shall be entitled to receive and be paid compensation as hereinafter provided."

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J. Bhatia





and we were really only the most important ones. Sections 37 to 39 provide the manner in which the record shall be prepared and gross assets of a mutual determined. Section 40 provides that a death compensation assessment roll shall be prepared, and section 41 requires that the roll shall be signed by the Compensation Officer, section 42 provides the manner in which the gross assets of an intermediary are to be determined, and section 43 deals with the manner in which the net assets of an intermediary shall be found. Section 44 requires that the death compensation assessment roll shall be published in the manner provided therein. Section 47 provides that a date shall be fixed for hearing of objection against the death compensation roll, and section 48 provides for the manner in which the objection shall be heard. Sections 49, 50 and 51 deal with the order to be passed on the objections and with appeals that may be filed against the order before the District Judge and the High Court. Section 52 requires that the Compensation Officer shall deliver free of charge a copy of the compensation assessment roll to the intermediary concerned and shall cause a copy thereof to be fixed on the notice board at the office of the Assistant Collector in charge of the Sub-Division. Section 54 provides that the compensation shall be eight times the net assets of an intermediary, and reads as follows:

"54. The amount payable as compensation to an intermediary in respect of his interest in the mutkals to which the compensation assessment roll relates shall, except where the interest of the intermediary therein is held by a shikayat, be eight times the net assets mentioned in the roll."

Section 56 provides that the amount determined under section 54 as compensation payable to an intermediary, shall be declared by the Compensation Officer as the compensation payable to him in respect of his

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income of a person can alone be considered alone, as essential nature. We are, therefore, called upon to decide as to whether the amounts paid as interest are additional compensation or not, instead of secret share in income from other sources as is claimed by the respondent.

Section 4 of the Indian Income Tax Act reads as follows :

" Save as otherwise provided by this Act, the following heads of income profits and gains shall be chargeable to income-tax in the manner herein there appearing, namely:—

- (i) Salaries,
- (ii) Interest on securities,
- (iii) Income from property,
- (iv) Profits and gains of business, profession or vocation,
- (v) Income from other sources,
- (vi) Capital gains.

The petitioner admittedly, has been a resident in the taxable territories throughout his life and was so even during the year of assessment giving rise to this writ petition. Section 4 of the Income Tax Act as far as relevant for our purposes provides that subject to the provisions of that Act, the total income of any person or firm or any person includes all income, profits and gains from whatsoever source derived either now or hereafter, or which are deemed to have been derived in taxable territories in such year or on behalf of such person, or which, if such person is resident in the taxable territory during such year, accrue or arise or are deemed to accrue or arise to him in the taxable territories.



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Under the provisions of section 25 of the Act compensation was due to the petitioner from the date of his seizure. It is not possible to say that the amount of compensation could not be paid before the same was determined and the determination of the amount would necessarily have taken time, and section 25 of the Act further provided that interest shall be paid on the amount of compensation determined from the date of seizure to the date of payment in cash if it was paid in cash and to the date of redemption of the bonds if paid in bonds. The legal position, therefore is that the petitioner became entitled to compensation on the date of seizure, and accordingly he was not paid the amount of compensation which is being paid to him even that amount till the redemption of the bonds. So far as the acquisition of his rights in the estate is concerned the compensation he is entitled to receive is the one provided for in section 25 of the Act, i.e., the amount declared as compensation under section 25 of the Act and no more. We have already mentioned the various sections in the Act relating to compensation in an earlier part of this judgment and will do so say that the amount (the) is declared under section 25 as the principal amount (of compensation) and does not include any interest. Therefore under the law the amount that the petitioner received for the acquisition of his rights title and interest in his estate is only the one which has been declared under section 25 of the Act, i.e., the principal amount. The additional sum that was being paid to him was not directly connected with the acquisition of his rights title and interest in his estate but was a sum for the use of the Government in making of his money (compensation amount) till the date of redemption.

It is clear that the compensation contemplated by the Act is not equal to the value of the property acquired. It is also true that so far as the Act is concerned a clear



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Government. It has got to be conceded that the position under the Act is not a normal one. Ordinarily compensation has got to be paid in cash and arises by contract, even when the Government itself determines the compensation; whereas itself by law puts the position of a debtor and relegates the intermediary to that of a trustee and thus uses the money which contractually and legally is that of the intermediary, but over which he is not given actual possession or control. It is true that such a position is one quite to the Act, but the Legislature has created the position and the Act has been held to be valid. In this view of the matter it appears to us that the amounts paid under the name of "interest" cannot possibly be the nature of compensation or damages but are in the nature of a return for the use that the Government makes of the money under the law deemed to be belonging to the intermediary.

It is obvious that in view of the peculiar provisions of the Act it would not be possible to get a direct authority on the point raised before us, and neither any decided case nor any well-known principle, of the law of Indian Domain or relating to the determination of compensation can help us. The case has got to be decided on the basis of its own provisions.

A large number of English as also some Indian cases have been cited before us. So far as the English cases are concerned we have to keep in mind the warning given by the Privy Council in the case of *Commissioners of Inland Revenue, Bengal v. Shaw Wallace & Company* (1) that it is the Indian Statute and not the English decisions, which can help in interpreting the former. However, having looked into these decisions, it appears to us that there are three main groups in which these cases can be divided. The first group consists of cases arising out of a claim by or against a person who has been

(1) 21 B. 100 (P.C. 191).















because compensation be requisitioned. In this case no such reference has been placed upon certain passages from the book "Constitutional Limitations to Coercion" as also from the book "Financial Domains by Nichols" which were considered by these Lordships of the Supreme Court in the case of *State of Bihar v. Kameswar Singh* (1). These passages only indicate that acquisition of money can only amount to compulsory loans and generally such compulsory loans are not required to be a loan except in emergencies like war. The law contained in these passages relates to the general law as applied in America and other countries and has nothing to do with the interpretation of the provisions of our Act. Even these passages clearly indicate that compulsory loans are levied or can be levied in cases of emergency. Therefore notions of compulsory loans are not unknown to the civilized world. In our Act in substance by levying compulsory loans the State issues a compulsory loan and its validity has got to be decided on the basis of our own Constitution and not with reference to the statement of law contained in the book of either Cooley or Nichols. The Supreme Court in *Kameswar Singh's* case (2) has already held that the payment of compensation by means of bonds is not unconstitutional.

For these reasons we are all of the opinion that the sums which are paid as interest on the compensation bonds are not compensation. We are however sure that we have arrived at this conclusion with a certain amount of reluctance. The compensation that was paid to the petitioner was far less than the value of his property. The payment of the compensation has also been spread over a period of 40 years and if out of the interest which is paid on the principal amount large sums are to be taken away by the income-tax authorities it must

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be adjudged to be a case of extreme hardship, but we have to administer the law as it is and consequences of hardship cannot prevail over the express language of the statute.

The next question to consider is whether these amounts can be considered as interest on securities or income from other sources. We will first go into the question whether they can be treated as interest on Government securities. Section 2(4) of the Indian Securities Act, 1920 (No. X of 1920) reads as follows :

"In this Act, unless there is anything repugnant to the subject or context,—

(a) 'Government security' means promissory notes (including treasury bills), stock certificates, bearer bonds and all other securities issued by the Central Government at any time or by Government of any Part A State before the 1st November, 1946, or by a State Government on or after that day in respect of any loan contracted either before or after the passing of this Act, but does not include a currency note."

Thus in order to be a Government security, a promissory note, or a stock-certificate, or a bearer bond has got to be in respect of "any loan". In the present case we have to look into the question whether the compensation bonds issued by the Government through its agent may be said to be in respect of "any loan". It may be said that by issuing bonds Government has compulsorily taken the compensation amount on loan. However it is not in that sense that the word 'loan' has been used in the Indian Securities Act. Consequently in our judgment the compensation bonds cannot be held to be Government security within the meaning of the Indian Securities Act.

It may now be considered whether the compensation bonds can be considered to be a security within the



meaning of that word occurring in the Public Debt Act (No. 16 of 1944). Section 2(1) of that Act reads as follows :

"(1) In this Act, unless there is something repugnant to the subject or context,—

(i) 'Government security' means—

(a) a security, created and issued by the Government for the purpose of raising a public loan, and having one of the following forms, namely :

(i) a stock transferable by registration in the books of the Bank; or

(ii) a promissory note payable to order;

or

(iii) a promissory note payable to order;

or

(iv) a form prescribed in the behalf;

(b) any other security created and issued by the Government in such form and for such of the purposes of this Act as may be provided.

In our opinion the present bonds which are in the form of promissory notes are fully covered by the definition given in sub-section (i) of section 2 of the Public Debt Act. It is not necessary to go into this question in great detail because the Registrar on behalf of the petitioner has proceeded on the assumption that the same paid by way of interest on the compensation bonds if not held to be additional compensation would be liable to income tax.

Even if there was some difficulty, though we do not see any, in holding that the interest on compensation

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Act  
(No. 16 of  
1944)  
Section  
2(1)  
(i)  
(a)  
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## SUPREME COURT

## APPELLATE CIVIL

*Before the Hon'ble Mr. Justice Kapur, the Hon'ble Mr.  
Justice Hidayatullah and the Hon'ble Mr. Justice  
Shah*

GOVERNMENT OF UTTAR PRADESH AND  
OTHERS (Appellants)

*vs.*  
RAJESH

RAJA MOHAMMAD AMIR AHMAD KHAN  
(Respondent)

[ON APPEAL FROM THE DISTRICT COURT AT ALLAHABAD]

**Stamp Duty.**—Presentation of a document to Collector for authentication of signature of Collector to exempt the document as to stamping duty chargeable—Indian Stamp Act, 1899, ss. 32, 33 and 34.

When an instrument, whether executed or not, and whether privately stamped or not, is presented to the Collector under s. 32 of the Stamp Act, his power is limited to the authentication of the duty chargeable on the same. The Collector neither creates right or title as to the document question and has therefore no power of expounding the instrument under s. 33 of the Act which is confined to the production of a document as a piece of evidence or for being filed upon, registered or re-registered. It would be an extraordinary provision if a person simply asking the advice of the Collector as to stamp duty payable without drawing or producing any further in regard to that instrument should be subject to the liabilities involved in the use of unstamped or under-stamped instruments.

*Coke and Kelly* is not (1), *Attor, Collector, Ahmednagar v. Amalram Tularam Vaidal* (2), *Prithi Nathani v. Gopi* (3) and *Chandni Pratiksha Das v. Pragnanand Kumararam* (4) referred to.

Civil Appeal No. 549 of 1935, from the judgment and decree, dated the 17th January, 1935, of the Allahabad High Court (Lucknow Bench) at Lucknow, in Civil Miscellaneous Application No. 17 of 1934.

20 CASES 114 N. 12 Feb. 1935

20 ALL. 1935 Dist. 120

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C. B. Agnew, Senior Advocate (C. P. Lal, Advocate)

**P. B. Sporn, Advocate for the powerless**

The following judgment of the Court, was delivered

10712. J. —That is an appeal against the judgment and order of the High Court of Allahabad on a writ case granted by that court. The respondent filed a petition under Art. 226 of the Constitution praying that the imposition of stamp-duty by the Collector of Sarguja, of Rs. 15,500-7 and a penalty of Rs. 5,000 against him and would not be realized against him and prayed that the order be quashed. On September 12, 1948, the respondent executed a writ by and execution of Sarguja and then it was issued on a stamp paper which was signed by the respondent and attested by witnesses. On September 15, 1948, it was presented to the Collector for his opinion under s. 32 as to the duty chargeable. As the Collector himself was in doubt he referred the matter to the Board of Revenue which also a fairly long time, held that the document was liable to duty in accordance with Art. 31 of the Stamp Act. On October 29, 1951, the Collector held that Rs. 15,500-7 were payable in stamp duty and ordered that it be deposited within fifteen days. Notice to this effect was served on the respondent on November 20, 1951. Thereupon the respondent filed a petition in the High Court under Art. 226 which was dismissed on November 2, 1954, on the ground that it was premature. On February 4, 1954, a further notice was served upon the respondent to deposit the amount of the stamp duty plus the penalty of Rs. 5,000 within a month otherwise proceedings would be

when spent, him under s. 41 of the Stamp Act. Thereafter on March 11, 1854, the respondent filed a petition under Art. 226 of the Constitution in the Allahabad High Court challenging the legality of the imposition of the stamp duty and the penalty and prayed for a writ of certiorari. A full bench of the High Court quashed the order of the Collector and the State of U. P. has come in appeal to this Court.

The decision of this appeal depends upon the interpretation of ss. 30, 31 and 32 of the Stamp Act. The relevant portion of s. 30 provides—

Section 30(3)—“When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector and the person bringing it applies to him the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in such case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable”.

It is admitted that the document in dispute was submitted to the Collector for his opinion under s. 30 and the opinion of the Collector was sought as to what the duty should be. Under s. 31 of the Act when such an instrument is brought to the Collector under s. 30 and he determines that it was already fully stamped or he determines the duty which is payable on such a document and that duty is paid, the Collector shall certify, by endorsement on the instrument presented that full duty with which it is chargeable has been paid and upon such endorsement being made, the instrument shall be deemed to be fully stamped or not chargeable to duty as the case may be. Under the proviso to s. 32, the Collector is not authorized to make the endorsement if

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Continued  
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vs. State of  
U. P.  
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THE  
GOVERNMENT  
OF BOMBAY  
IN  
COUNCIL  
J. B. SHAH,  
SECR. (GENL.)  
BOMBAY  
APRIL 1901.]

an instrument is brought to him a month after the date of its execution. This defines s. 32 which was as follows:

Section 32. "Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office except an officer of police, before whom an instrument chargeable in his opinion with duty is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped impose the same."

(1) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed.

Provided that—

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898.

(2) In the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in case of doubt,—

(a) the following Government may determine what officers shall be deemed to be public officers, and



191.  
 Commencement  
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Some (appellants) was that if an instrument whether stamped or not is submitted for the opinion of the Collector before it is executed, i.e., it is signed, then the Collector is required to give his determination of the duty chargeable and return the document to the person seeking his opinion but if the document is written on a stamped paper or unstamped paper and it is executed then different consequences follow. In the latter case it was submitted that under s. 33 the Collector is required to impose the document if he finds that it is not duly stamped. On the other hand it was submitted on behalf of the respondents that on his giving his opinion the Collector becomes *functus officio* and can take no action under s. 33. It is these two rival consequences of the proviso that require to be decided in this case.

After an inordinately long delay the Collector determined the amount of duty payable and impounded the document. Power to impound is given in s. 33 of the Act. Under that section any person who is a Judge or is in charge of a public office before whom an instrument chargeable with duty is produced or comes in the performance of his functions is required to impound the instrument if it appears to him not to be duly stamped. The question is does this power of impounding arise in the present case? The instrument in dispute was not produced as a piece of evidence nor for its being acted upon, e.g., registration, nor for endorsement as under s. 33 of the Stamp Act has been mainly brought before the Collector for seeking his advice as to what the proper duty would be. The words "every person . . . before whom any instrument . . . is produced or comes in the performance of his functions" refer directly to production before judicial or other officers performing judicial functions in evidence of title but so be proved and secondly refer to other officers who have to



perform any function as regard to those instruments when they come before them, e.g., registration. They do not extend to the determination of the question as to what the duty payable is. They do not cover the acts which fall within the scope of s. 31, because that section is complete by itself and is made complete by saying that the Collector shall determine the duty with which, in his judgment, the instrument is chargeable, if it is chargeable at all. Section 31 does not postulate anything further to be done by the Collector. It was assumed that if the instrument is unexecuted, i.e., not signed and the opinion of the Collector is sought, he has to give his opinion and return it with his opinion to the person seeking his opinion. The language as regard to executed and unexecuted documents is no different and the powers and duties of the Collector as regard to those instruments are the same, that is, when he is asked to give his opinion, he has to determine the duty with which, in his judgment, the instrument is chargeable and there his duties and powers in regard to that matter end. Then follows s. 32. Under that section the Collector has to verify by endorsement on the instrument brought to him under s. 31 that full duty has been paid, if the instrument is duly stamped, or it is unstamped and the duty is made up or it is not chargeable to duty. Under that section the endorsement can be made only if the instrument is presented within a month of its execution. But what happens when the instrument has been executed more than a month before its being brought before the Collector? Section 31 places no limitation as regard to the time and there is no reason why any time limit should be imposed as regard to seeking of opinion as to the duty payable.

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Chapter IV of the Act which deals with instruments not duly stamped and which contains ss. 33 to 48, provides for impounding of documents, how the impound

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ed documents are to be dealt with, Collector's powers to stamp instruments impounded and how the duties and powers are to be exercised. It would be an extraordinary position if a person seeking the advice of the Collector and not wishing to rely upon an instrument as evidence of any fact to be proved nor wishing to do any further act in regard to the instrument: so as to efface it in operation should also be liable to the penalties which unstamped instruments incur as shown might involve. The scheme of the Act shows that where a person is simply seeking the opinion of the Collector as to the proper duty to be paid on an instrument, he approaches him under s. 31. If it is properly stamped and the person executing the document wishes to proceed with effectuating the document or using it for the purpose of evidence, he is to make up the duty and under s. 32 the Collector will then make an instrument and the instrument will be treated as if it was duly stamped from the very beginning. But if he does not want to proceed any further than seeking the determination of the duty payable there no consequence will follow and an unstamped document is in the same position as an instrument which is unstamped and unstamped and after the determination of the duty the Collector becomes functus officio and the provisions of s. 32 have no application. The provisions of that section are a subsequent stage when something more than merely asking of the opinion of the Collector is to be done.

Our attention was drawn to the observations of Rivers, C.J., in re *Coker and Kelly*, (i) but these observations are clear as the High Court held that the reference under s. 37 of the Stamp Act was incompetent. The doctrine of functus officio was applied in several cases: *Collector, Almorahpur v. Ramdhan Thakuram Noida* (2). In that case a certificate of sale had been

(1) Page 114, in Vol. 195.

(2) 15 S.T.R. 192 (1904) 394.

signed but the certificate was not duly stamped which was pointed out when it was sent to the Sub-Registrar for registration. The Sub-Registrar informed the Judge about it and the Judge got back the certificate from the purchaser and thinking that he had power to impose the documents and to impose a penalty asked for the approval of the High Court and it was held that after he has signed it he was *functus officio* and could not act any further and could not impose it. The same principle was laid down in *Padao Kashinath v. Gajra* (1) and in *Chandani Parabhai Rao v. Paraguide Kankaravenu* (2) and in our opinion so soon as the Collector discharged the duty he became *functus officio* and he could not impose the instrument under s. 34 and consequential proceedings could not, therefore, be taken.

The appeal is therefore dismissed with costs.

*Appeal dismissed*

(1) 11 B. 1948 Nag. 100

(2) 41 B. 1927 Mad. 76.

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## CIVIL MISCELLANEOUS

Before Mr. Justice Gadhvi and Mr. Justice L. Jadhvi

MESSRS. GADHU MAL KACHHAVA LAL

(Appellants)

v.  
The  
Commissioner of Income Tax (Respondent)COMMISSIONER OF INCOME TAX (Respondent)  
Facts

**Income Tax.**—Silver coins forming part of cash balance of assessee coming in the legal consideration by sale of silver coins.—Income Tax Act, 1922, s. 4(1)(vii).

Where silver coins included in the cash balance of the assessee company on money lending business came to be legal tender for silver deposits to and a loan part of the cash on sale of the money lending business. The profits made by the sale of silver coins in a given fiscal year were charged to cash value account, therefore, he said to be appreciation in cash or capital in the absence of any finding or material on record to establish that the assessee had been accumulating these silver coins from year to year with the effect of making profits the gain in question is one of a casual and non-recurring nature and is, in truth, not capital or investment.

Miscellaneous Income tax, Case No. 387 of 1932.

The facts appear in the judgment.

M. L. Gadhvi, for the appellant.

Gopal Bhatia, counsel for the opposite party.

The judgment of the Court was delivered by—

UNNAYI, J.—The questions referred by the Income tax Appellate Tribunal are:

(1) Whether on the facts said in the income story of this case the amount of Rs. 5,800 gained by the assessee by the sale of silver coins is a casual gain within the meaning of section 4(1)(vii) of the Indian Income-tax Act or a recurrent income?

(2) Whether the Indian Income-tax Ordinance No. 22 of 1930 is ultra vires?

Learned counsel for the assessee stated that he did not want that question no. 2 which had been referred to the assessor's master should be answered. We therefore do not answer that question.



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Hindu Law  
Reports  
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Part 1  
Section 100  
of the Act

balance of the account. As the account did merely find-  
ing business the cash balance held by him was a stock-  
in-trade and not an appreciation of that cash as an appreci-  
ation of that stock-in-trade. The Income-tax Appellate  
Tribunal therefore held that the 'profit out of this ap-  
preciation is liable to be taxed.'

While stating the facts of the case the Income-tax  
Appellate Tribunal has appended its own typewrite  
order, out of which the questions arise, and the orders  
of the Income-tax Officer and the Appellate Assistant  
Commissioner, and observed that these orders would  
form part of the case. We have therefore been taken  
through these orders of the learned counsel for the  
petitioner.

When the liability of the sum of Rs. 45,000 was dis-  
puted before the Appellate Tribunal a plea was put  
on behalf of the assessee on the ground on which the Appellate  
Assistant Commissioner had upheld the inclusion of  
that amount in the total income of the assessee. While  
the Income-tax Officer treated it as profits and the Appel-  
late Assistant Commissioner held that it was gain from  
an adventure in the nature of trade the Appellate Tri-  
bunal found that it was an appreciation of the cash  
balance of the assessee and as the assessee was a money  
lender the cash balance was his stock-in-trade and  
because the assessee was an appreciation of the stock-in-  
trade it was a gain liable to tax as gains made in the  
money-lending business. We have therefore only to ex-  
amine whether the amount is taxable on the ground stated  
by the Income-tax Appellate Tribunal or whether it is  
not liable to tax because of the provisions of section 41(1)  
of the Act.

The Income-tax Appellate Tribunal has stated that the  
assessee had a *Cher Khan* or some other account in which  
large amount of cash is usually maintained. In the year  
1955 the balance in this account amounted to Rs. 45,000.  
The rupees which were sold and formed part of the cash

balances were held by the assessee year after year. When the silver notes ceased to be legal tender the assessee did not take steps to have them exchanged for current currency and these notes remained with him like other assets held by his family. The other assets in the Ghar Khana were shares and securities and house properties etc. held by him. The Appellate Tribunal has also stated that the assessee used to withdraw amounts from the balances held in the Ghar Khana as necessary sums for investment in his money lending business. From these facts it would appear that the large amount of cash held in the Home Chest did not form part of the cash balance of the money lending business and that after the silver notes ceased to be legal tender they ceased to be parts of the cash balance of the assessee and remained with him only like other assets. The statement of the facts does not say as to when these notes ceased to be legal tender. But learned counsel not agreed that they ceased to be legal tender several years prior to the relevant accounting period.

It is evident therefore that these silver notes which were sold by the assessee did not form part of the cash balance of the money lending business and it could not be said that they formed part of the stock-in-trade of the money lending business. Besides the Tribunal appears to have overlooked the fact that after these notes had ceased to be legal tender they could not possibly form part of the cash balance of the assessee because the cash balance could consist only of money which was legal tender. The view taken by the Tribunal therefore that the sum of Rs. 3,000 was an approximation of the assessee's stock-in-trade is incorrect. The silver notes were held by the assessee like other assets of the family. If the value of the house property held by the assessee approached a million it could not be contended that the increase in value amounted to an approximation of stock-in-trade. Similarly if the silver notes which had remained in his

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payments were subsequently found valuable at a higher price it could not be said that the increased value received was due to an appreciation of the work in trade. The silver coins were never the subject matter of any trade at all.

We are therefore of opinion that the sum of \$1,500 is not profit due to appreciation of the interest's work in trade in money trading business.

Section 4(3)(c) reads as follows:

"Any receipts not being capital gains chargeable according to the provisions of section 4(1) and not being receipts arising from business or the exercise of a profession, vocation or occupation which are of a casual and non-recurring nature or are not by way of addition to the remuneration of an employee."

The clause excludes such classes of income, profits or gains according to section 4(1) are not to be included in the total income of the person receiving them.

It is contended on behalf of the assessee that the gain was of a casual and non-recurring nature. Silver coins ceased to be legal tender on a particular date. Thereafter the value of the coins depended on their silver content and the price of silver prevailing in the market. If the price of silver had gone down the silver coins would have been worth less than their face value. The fact that they ceased to be legal tender could occur only once and any gain made by the sale of old silver coins could be said non-recurring in character. It is also contended because it could not be expected with any reasonable certainty at the time when these coins were replaced by other coins and ceased to be legal tender. The gain, therefore, was also casual. The appellate Authority Commissioner has sustained in support of his opinion that the gain was from an adventure in the money



of note that the answer had been accumulating silver coins from 1916 to 1917 with the object of profit making.

I signed counsel for the department has not been able to point out any material to the record which would warrant such a finding. From the mere fact that the answer did not get these silver coins exchanged for other coins which were introduced by the government as legal tender, no inference can be drawn about the object with which he intended to get these coins changed. Keeping of large amounts of cash and other assets was a normal phase of the answer's manner of doing things and in the absence of any evidence and, more clearly, when the answer was not called upon to show cause why such an inference may not be drawn against him, it would not be fair or just to infer from the fact that he stored silver coins to be in his possession, that he intended to make profits. But the reason given by the Appellate Assistant Commissioner is not strictly relevant for the Appellate Tribunal has not upheld the taxability of the amounts on that ground at all. The Tribunal's finding is based on the view that the silver coins formed part of the money-lending business of the answer, and as such were part of the stock-in-trade whose appreciation was liable to tax.

We have examined the Appellate Assistant Commissioner's view only to consider whether the gift may be said to be of a casual nature.

Having regard to the facts and circumstances of the case, mentioned above, we are of the view that the gift was of a casual and non-recurring nature and was not income liable to tax. We answer the first question accordingly.

The answer will have his costs which is assessed at Rs. 100. For all kinds of counsel for the Income-tax Department is fixed at the same amount.

*Questions answered accordingly.*

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## APPELLATE CIVIL.

Before Mr Justice F. D. Bhagwati and Mr Justice  
Munir.

**THE  
FAMILY OF**

**BABOO NANDAN (Plaintiff)**

**VS  
UNION OF INDIA (Defendant)**

*Constitution of India, del. gov. Appointments of, in person  
"connected with defence"—Wrongful dismissal—Depriva-  
tion of professional opportunities.*

A member of a defence force<sup>1</sup> or a person holding an  
app. connected with defence<sup>2</sup> have been excluded and the right  
now appears to be recognised because the constitution  
makes no distinction in order to dismiss and removal of these  
persons was possible. As the plaintiff was an employee  
connected with defence, dismissal del. gov. will not apply.

After pleading guilty there was no question of giving him  
any opportunity to show cause whether he had continued  
the del. in del.

There is a suggested finding of fact based on evidence that  
the plaintiff del. order to accept the union there were  
made. If that was so, it cannot be said that the employees  
had not attempted to give him an opportunity.

The suggested finding of fact about sufficient opportunity  
having been given is lacking.

Second Appeal No. 415 of 1932 against the decree of  
B. S. MURTHA, J.C., (District Judge of Lucknow) as he  
then was dated 25th Mar. 1931.

The facts appear in the judgment.

*H. D. Bhagwati and Gopal Chandra for the appel-  
lant.*

*Justice Standing Counsel for the respondents.*

The judgment of the Court was delivered by—

F. D. BHAGWATI, J. —This is a second appeal which  
has been referred to a Divisional Bench by a learned  
single Judge of this Court, as, in his opinion, there was  
no important question of law involved in the matter  
about dismissal.

The plaintiff Babu Nandan was employed as a  
labourer in the Military Department of the Government

<sup>1</sup>Wing at Lucknow.



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the plaintiff, therefore, there was no occasion for giving an opportunity for leading evidence.

The trial court framed the following four issues:

(1) Was the plaintiff wrongfully dismissed as alleged?

(2) Is the notice for 3 illegal, as alleged?

(3) To what, relief, if any, is the plaintiff entitled?

(4) Is the new re-employment in force of the provision in section 42 of the Specific Relief Act?

Both the courts below dismissed the plaintiff's suit on the findings that his dismissal was not wrongful and he had been given sufficient opportunity to show cause. The lower appellate court while discussing the matter also came to the conclusion that Article 121 does not apply in the case of the plaintiff and even if there was no sufficient opportunity given to the plaintiff, the case would not be hit by Article 93 (1) of the Constitution, as he belonged to the Defence Services.

When an appeal was filed in this Court, it was first heard by a learned single Judge and an entirely new question was raised on behalf of the respondents and that was that the suit on the dismissed facts of the plaintiff was barred by limitation and it was contended that Article 12 of the Limitation Act applied which prescribed one year period of limitation and since the dismissal was on the 26th December, 1970, the suit in 1979 was barred.

On behalf of the appellants, it was contended that Article 120 of the Limitation Act applied and the suit was within time and reliance was placed on a decision of this Court in *Japhet Prasad Mehta v. D. P. Government* (1). The learned counsel for the appellants has argued three points before us:

(1) That there has been no infringement of Article 93 (1) of the Constitution.

(2) A.D. and A.B. 1981

(b) That Article 511 of the Constitution applies in the present case and the decision of the courts below is erroneous.

(c) That the case was within limitations.

We do not wish to discuss the second and third points at length, because in our view the concurrent finding of fact stated as by the courts below about sufficient opportunity having been given to the appellants in bringing on an anti-discrimination had been a sufficient opportunity given to the plaintiff appellants, the question whether the case is within limitations or not or whether Article 511(a) of the Constitution applies or not becomes immaterial. From the recitation of facts which we have given above, it is quite clear that he was given a due chance to which he pleaded guilty. After pleading guilty there was no question of giving him any opportunity to dispute and whether he had committed the theft or not. The second show cause notice was being given to him which he deliberately refused to accept. There is a categorical finding of fact based on evidence that he did refuse to accept this notice. If that was so the plaintiff is to blame himself for having not availed the opportunity and it cannot be said that the employers had not attempted to give him an opportunity.

There cannot be any doubt that he was employed in the Armed Forces. He was paid from the budget of the Defence expenditure and under the circumstances he would be deemed to be a member of the Defence Service or in any event he held a post connected with defence. If we compare the language of Articles 510 and 511, it would be quite clear that the Constitution makers did want to make a distinction between different kinds of services. In Article 510 they speak of the following four kinds of services:

- (1) A member of a defence service
- (2) A civil servant of the Union.

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 James  
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 P. B.  
 Knapton, J.

(1) A servant of an All India Service

(2) A servant connected with Defence or any civil post under the Union.

These are all liable to be dismissed at the pleasure of the President. In Article 312, "a member of a civil service of the Union or an All India service or a civil service of a State" has been mentioned so when the Article will apply. "A member of a defence service" or "a person holding any post connected with defence" have been omitted and the omission appears to be intentional because they wanted to make the dismissal and removal of these servants not possible, otherwise, there seems to be no reason why the words "connected with defence" have not been mentioned in Article 312. As the plaintiff was an employee "connected with defence", therefore Article 311 will not apply in this case.

We would prefer not to decide the question of limitation at this stage because on these two issues the plaintiff has no case and the case has rightly been dismissed by the two courts below.

The appeal, therefore, fails and is dismissed with costs.

*Appeal dismissed.*

## APPELLATE CRIMINAL

*Behari Lal, Jyoti Nigam and Sir Jyoti Nigam*

THE MUNICIPAL BOARD, BARA BANKA

v.

1961  
Banks 19

FAHRIUL HASAN

Provision of Food Adulteration Act, 1954, s. 7(a), read with s. 14(1) (b) & (c), whether it operates as offence or joint offence—Word 'sale' defined.

The provision S. 14(1) (b) is a, surely a, an, each, under-standable provision of law. The fundamental rules of mere persons that the Court will neither add any word to, nor subtract anything from the provision unless it is necessary to do so. So there is no reason for adding any words to the enactment as it stands. Therefore the section as it stands clearly punishes any person who sells an adulterated article. It does not say that the person must make a sale for or on his own behalf. It merely provides that any person who sells an adulterated article may be punished and there is no reason for making any distinction between a dealer and a servant if he actually makes a sale.

Criminal Appeal No. 246 of 1961 against the judgments passed by Sri S. C. Misra, B. Temporary Civil and Sessions Judge, Bara Banka, dated February 29, 1960.

The facts appear in the judgment.

M. L. Trench and Magistrate Dutta for the appellants  
Shyam Lal Misra for opposite party.

The judgments of the Court was delivered by—

Misra, J.—This is an appeal under section 477 (5) of the Code of Criminal Procedure preferred by the Municipal Board, Bara Banka, against Fahriul Hasan, who was originally prosecuted for an offence under section 7 (b) read with section 14 (1) (b) of the Provision of Food Adulteration Act (No. XXXVII of 1954).

<sup>1</sup>Being an Advocate.







the Illinois High Court. We pointed to give our reasons. The first reason is that in our view the provisions of section 19 of the Prevention of Food Adulteration Act, under act is not a necessary ingredient in so far as this offense is concerned. Section 19 clearly specifies the defenses which may or may not be allowed in a case under this Act and reads—

"19 (3) It shall be no defense in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him."

It is then clear that ignorance on the part of the vendor is no valid defense in a prosecution under this Act. This knowledge needs less mention, is not a necessary ingredient of the offense.

The second reason has reference to the definition of the word "sale" given in section 2 (24) of this Act. The definition reads—

"Sale" with the grammatical variations and other expressions, means the sale of any article of food . . . for human consumption or use, or for analysis, and includes . . . the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article."

In our opinion the definition of "sale" is wide enough to cover the case of a servant having in his possession article for sale and also exposure of the article for sale by a servant on behalf of his master.

We have made reference to this definition, so it will help the definition on the point is as to whether a servant is liable under section 19(1) (3) of this Act or not. We

therefore, turn to the provisions of section 26. Section 26 reads:

(b) (i) If any person—

(a) whether by himself or by any person on his behalf, sells or distributes any article of food in contravention of any of the provisions of this Act or of any rule made thereunder"

1941.  
The  
Municipal  
Board, Kuala  
Lumpur  
1941.  
Section 2.

It is not necessary for us to note that it is one of the fundamental rules of interpretation that the court will neither add nor void so, nor subtract anything from, the provision unless it is necessary to do so. The provision, as it stands, is an easily understandable provision of law. We do not see any reason for adding any words to the provision as it stands. It is also clear to us that the section as it stands clearly punishes any person who sells up adulterated article. It does not say that the person must make a sale for or on his own behalf. It merely provides that any person who sells an adulterated article may be punished and we do not see any reason for making any distinction between a master and a servant if he actually makes a sale.

We may further add that the learned counsel for the respondent has not urged this point at all before us. It was conceded by him that a servant was liable. We have, however, considered it necessary to discuss this question to give guidance to the courts below.

The only point urged by the learned Counsel for the respondent is that the prosecution was incompetent inasmuch as the complaint was preferred by the Executive Officer of the Municipal Board. The learned Counsel refers to a notification of the State Public Health Department no. 10505/XYI(PH)—411-32, dated

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December 18, 1933, in which the "Hindu Government" authorized all Municipal Medical Officers of Health, all District Medical Officers of Health, Sanitary Medical Officers of the Corporation Boards and District Medical Officers of various Indian Railways to institute or to give written consent for instituting prosecutions under Act XXXVII of 1934. The learned Counsel also referred us to the provisions of section 20. Section 20 lays down that "no prosecution for an offence shall be instituted except by, or with the written consent of the State Government or a local authority or a person authorized in this behalf by the State Government or local authority." The learned Counsel had to concede that the local authority, i.e., the Municipal Board of San Basils, could also have authorized any of its officers to institute prosecutions or to institute or waive a prosecution. Thus the objection raised by the learned Counsel raises a question of fact as to whether the Municipal Board of San Basils had or had not authorized the Executive Officer to institute or to give consent to such prosecutions. This question does not appear to have been raised in the trial court, nor was it raised in the grounds of appeal before the learned Additional Sessions Judge. We, therefore, do not find it possible to allow the learned Counsel to raise this question at this stage. From the fact that the Food Inspector requested the Executive Officer to institute the prosecution it appears to us to have been the general practice for such prosecutions to be instituted by the Executive Officer and there is no reason to suspect that the Executive Officer was not acting in accordance with duty or in exercise of his powers.

The last point urged by the learned Counsel is as regards the amount of the fine. We are unable to consider that the fine imposed on the respondent is excessive.



## CIVIL MISCELLANEOUS

Before Mr. Justice Tandon and Mr. Justice Mulla\*

SRI MEDAR NATH SETHI (Plaintiff)

vs.  
THELIFE INSURANCE CORPORATION OF INDIA  
THROUGH SRI T. S. SWAMINATHAN DONAL  
MANAGER AND ANOTHER (Respondents)

**LIFE Insurance Corporation Act, 1954 : 11(1).—***Corporation's power to alter terms regarding transferred employees.—(1) subject to the provisions of sub-section (2) of section 11, the Corporation may, in relation to the employees of the Corporation who are transferred to the Corporation, alter the terms of their employment, and may, in relation to the employees of the Corporation who are transferred to the Corporation, alter the terms of their employment, and may, in relation to the employees of the Corporation who are transferred to the Corporation, alter the terms of their employment.*

There is a clause relating to employees (1) of section 11 of the Act which provides that the transferred employees who, in relation to the Corporation, are transferred to the Corporation, and conditions which were then in force in relation to the Corporation. This is the provision providing the power to alter the terms and conditions which were then in force in relation to the Corporation, and conditions which were then in force in relation to the Corporation.

The clause (2) of section 11 of the Act, which provides that, in relation to the transferred employees and clause (1), has been interpreted by the court in relation to the clause of making all clauses which might have been made in that behalf.

There is another clause in relation to which the Corporation provided the necessary authority to make regulations in relation to transferred employees also. The main power to make regulations is derived under sub-section (1) and sub-section (2) of section 11 of the Act, which provides that the Corporation may, in relation to the employees of the Corporation, alter the terms of their employment, and may, in relation to the employees of the Corporation, alter the terms of their employment. The power under sub-section (1) and sub-section (2) of section 11 of the Act, which provides that the Corporation may, in relation to the employees of the Corporation, alter the terms of their employment, and may, in relation to the employees of the Corporation, alter the terms of their employment. The power under sub-section (1) and sub-section (2) of section 11 of the Act, which provides that the Corporation may, in relation to the employees of the Corporation, alter the terms of their employment, and may, in relation to the employees of the Corporation, alter the terms of their employment.

\*Hidayat Ali, J.



1931  
 The Eastern  
 Assurance Co. Ltd.  
 [The  
 Corporation  
 of London  
 (Councils)]

business. This business which has been called an un-  
 controlled business was as a result of the amalgamation  
 transferred and vested in the corporation. The employ-  
 ees of these separate companies were also transferred in  
 the process under the employment of the corporation.

Section 14 of the Life Insurance Corporation Act  
 which made provision for the transfer of the services of  
 such employees laid down that every whole-time em-  
 ployee of an insurer, i.e., an estate-life insurance com-  
 pany whose controlled business had been transferred  
 to and vested in the corporation and who was employed  
 by the insurer wholly or mainly in connection with his  
 controlled business immediately before the appointed  
 day, i.e. the 1st September, 1928, shall, on and from  
 that day become an employee of the corporation. The  
 section further laid down that such employee shall hold  
 his office in the corporation by the same tenure, at the  
 same remuneration and upon the same terms and condi-  
 tions and with the same rights and privileges as to pen-  
 sion and gratuity and other matters as he would have  
 held the same on the appointed day if the said Act had  
 not been passed and further that he shall continue to  
 do so unless and until his employment in the corpora-  
 tion is terminated or until his remuneration, terms and  
 conditions are duly altered by the corporation.

In pursuance of the above provision Mr. Sethi became  
 an employee of the corporation. It is material to point  
 out just now that according to the terms and conditions  
 applicable to him his salary was below Rs. 500. This  
 will be relevant in considering the applicability of cer-  
 tain regulations which in due course were promulgated  
 by the corporation governing the conditions of service  
 etc., of the staff working under it.

Mr. Sethi held the post of Inspector and as such belong-  
 ed to the field staff. In the performance of his duty he



had to take work from agents and also received premiums from policy holders, etc., towards policies held or procured by them. It is alleged that Sri Saha in the performance of his said duty received two sums of Rs. 45 58-8 P. from one Dr. Kapoor whose life policy had lapsed on account of non-payment but instead of putting the said amounts into the corporation he retained them and deposited the same in his personal account. A minute charge-sheet accusing him of misappropriating these amounts was, therefore, delivered to him on the 17th of July, 1949. A second charge-sheet accusing him of misappropriating four other items was also given to him on the 19th August, 1949. The charge against him in both was that he misappropriated these amounts, hence was guilty of misconduct and deserved to be punished.

The above charge-sheets were given to him by the Zonal Manager, Mr. H. S. Swaminathan, who further suspended him till the completion of the inquiry against him. The inquiry was then entrusted to Sri G. M. Sharma, an officer of the corporation, who is responsible

It is not necessary for us to state here all these facts which have been alleged in the case by the two parties since they have come to an agreement before us wherefore the petitioner will be allowed by the present Zonal Manager a reasonable opportunity to show cause on the charges delivered to him including an opportunity to adduce such further evidence or to cross-examine any witnesses already examined as he should consider necessary before the final action is decided against him. In view of this agreement it is no longer necessary for us to consider that part of the case which concerns the inquiry by Sri G. M. Sharma and the competence of that officer to hold the same. The parties, however,

1949  
for Extra  
Semi-Monthly  
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Semi-Monthly  
Contribution  
to 1949  
[Continued.]

1940  
 The Director  
 of Insurance  
 &  
 Life Insurance  
 Corporation  
 of India,  
 Bombay.

agreed that the Zonal Manager will not be dis-  
 enabled from looking into the report of his Division  
 should he so consider it necessary but as this case he  
 will give an opportunity to the prisoner to say what  
 ever he has to say against it and to contest it. Thus  
 one of the ground reliefs which the prisoner has asked  
 the court to grant is the order which we are called upon to make is  
 with regard to the suspension order dated the 14th July  
 1939, made by the Zonal Manager.

The prisoner's attack on the validity of the suspen-  
 sion order is two fold. Firstly, he claims that as an  
 employee of an amicable insurer he was governed in  
 the matter of his employment by the same terms and  
 conditions, etc., as were applicable to him while in the  
 employ of the insurer and that, therefore, his employ-  
 ment could be terminated by the corporation as such  
 and not by any subordinate authority. In this manner  
 he claims that the Zonal Manager could not make the  
 impugned order while the Life Insurance Corporation  
 of India (Staff) Regulations, 1938, framed by the corpo-  
 ration in the purported exercise of its power under  
 clause (2) of sub-section (1) of section 48 were in effect  
 of no authority under the said provision. Secondly, he  
 has contended that even the Staff Regulations do not  
 confer authority on the Zonal Manager to make the  
 order of suspension as he does in virtue of sub-clause (2)  
 of clause (iii) of Regulation 2 which defined the Zonal  
 Manager to be his appointing authority and clause (a)  
 of Regulation 41 sub-versed the Divisional  
 Manager in part such an order.

It will be necessary in the course of discussion to refer  
 to the following provision of the Life Insurance Cor-  
 poration Act. Sub-section (1) of section 11 to which  
 reference must first be made provides for transfer of  
 services of employees of the amicable insurers. Sub-  
 section (3) of the same section gave authority to the

Central Government to reduce the remuneration, etc., of such employees where it was satisfied that it was necessary to do so for the purpose of securing uniformity in the rates of remuneration and salary terms and conditions of service applicable to them. Adversely the Self-Regulations apply have no reference to this provision.

194  
 The Union  
 State Union  
 in  
 Self-Regulating  
 Government  
 in 1944  
 Section 1.

The next provision to be referred is section 18 which is thus—

"18. (1) The central office of the corporation shall be at such place as the Central Government may by notification in the official Gazette specify."

(2) The corporation shall establish a zonal office at each of the following places, namely, Bombay, Calcutta, Delhi, Kanpur and Madras, and, subject to the previous approval of the Central Government, may establish such other zonal offices as it deems fit.

(3) The territorial limits of each zone shall be such as may be specified by the corporation.

(4) There may be established as many divisional offices and branches in each zonal as the Zonal Manager deems fit.

The next relevant provision is to be found in section 22 which is as follows—

"22. (1) The corporation may entrust the superintendence and direction of the affairs and business of a zonal office to a person, whether a member or not, who shall be known as the Zonal Manager and the Zonal Manager shall perform all such functions of the corporation as may be delegated to him with respect to the area within the jurisdiction of the Zonal office."

(2) "The Corporation may entrust the superintendence and direction of the affairs and business of a divisional office to a person, whether a member or not, who shall be known as the Divisional Manager and the Divisional Manager shall perform all such functions of the corporation as may be delegated to him with respect to the area within the jurisdiction of the Divisional office."

(3) "The Corporation may entrust the superintendence and direction of the affairs and business of a branch office to a person, whether a member or not, who shall be known as the Branch Manager and the Branch Manager shall perform all such functions of the corporation as may be delegated to him with respect to the area within the jurisdiction of the Branch office."

1958  
 The Reserve  
 Bank of India  
 or  
 Life Insurance  
 Corporation  
 of India  
 (Finance, J)

Then we come to section 29, sub-section (5) of this section 29—

"The corporation may, with the previous approval of the Central Government, by notification in the Gazette of India, make regulations and issue orders with this Act and the rules made thereunder to provide for all matters for which provision is required for the purpose of giving effect to the provisions of this Act.

And subsection (3) provides—

"In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) the method of recruitment of employees;

(b) the method of recruitment of employees and agents of the corporation and the terms and conditions of service of such employees or agents.

(c) the terms and conditions of service of persons who have become employees of the corporation under subsection (1) of section 21.

Section 29, sub-section (5) of section 29 of the Life Insurance Corporation Act, 1956.

The Staff Regulations, 1958, were prepared in that year and the President deemed that—

"Whereas it is necessary to frame regulations defining the terms and conditions of service of the staff of the Life Insurance Corporation of India the Corporation, in exercise of the powers vested in it under clause (b) of sub-section (3) of section 29 of the Life Insurance Corporation Act, 1956, and with the previous approval of the Central Government, is pleased to make the following regulations."

Then follow the several regulations but we shall be concerned primarily with two only, viz., regulations 3 and 4. Regulation 3 declared the Divisional Managers, since the prisoner was employed in the Branch Office in the District, to be his appointing authority. And Regulation 4, in making provision for the imposition of penalties upon delinquent employees laid down in clause (1) that, except the punishment of reprimand or censure, other penalties including dismissal and reduction to a lower post can be ordered by the appointing authority after a charge has been forwarded in writing and an opportunity has been given to the delinquent servant to show cause against it. Under Clause (2) the power of suspension during inquiry has been made exercisable by an officer who is empowered to pass the final order under the regulation. The final order, it is provided, can be made in the case of the prisoner by the Divisional Manager.

In the view that we are inclined to take about section 20 of the Act, given the Board Manager's power to suspend an employee working on his case, it should not be necessary to enter into the controversy raised by the petitioner that the Hall Employees act lawfully and in exercise of the power vested in the corporation in their application to the employees of the omnibus insurers transfer referred to as transferred employees. For since the question has been canvassed at length before us we consider it our duty to record a finding on that controversy also.

Even a minority, reading of subsection (1) of section 11 of the Act will indicate that the transferred employees were to continue in service of the corporations on the old terms and conditions until those were duly altered by the corporation. That is the corporate power to alter those terms and conditions which were then, were altered could no longer be



held that the words "such employees or agents" appearing in clause (b) have reference to those employees only who now have been recruited by the corporation subject quoted). The first part of clause (b) does provide for the making of regulations about the method of recruitment of employees and agents of the corporation but the latter part and particularly the word "such" preceding the words "employees or agents" do not themselves refer merely to employees and agents so recruited. The word "such" refers to employees and agents of the corporation and not to employees and agents of the corporation who might have been recruited by the corporation. Had the intention been to restrict the reference to recruited employees only, the correct description would have been something like this: "and the terms and conditions of service of employees or agents so recruited". The learned counsel for the petitioner has not disputed that the corporation possessed the power to make regulations providing for the terms and conditions of transferred employees also. Until clause (24) was inserted in sub-section (3) by the Life Insurance Companies (Amendment) Act, 1957 (Act 17 of 1957), there was, apart from clause (b), no specific provision for making regulations in the case of transferred employees. Once it is conceded that the corporation possessed authority to make regulations in their case too, the purpose of the restriction will be achieved by giving to clause (b) the interpretation that the power in it to lay down the terms and conditions of employees and agents of the corporation was not limited in the case of recruited employees only but was available in the case of transferred employees as well.

That this, indeed, was the intention of the Legislature too is confirmed by the Amendment Act of 1957. In making this amendment which was enacted with retrospective effect, the amending Act expressly said that the

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this clause shall be and shall be deemed the law to have  
 been inserted in the Statute of Oligopolies, and  
 because it was again and (see the Gazette of India for  
 resolutions, Part II, dated the 20th May, 1927, page 154)  
 that article 49 (1) was being amended so much is clear  
 that the law so conferred by clause (3) of sub-section (4)  
 of section 49 was available in the case of all employees  
 whether recruited by the corporation or taken over by  
 its corporations. The relative bill of which the ob-  
 jects and reasons were in a state a part had then been in-  
 troduced in remedy and reasons supposed doubts in the  
 language of clause (3), when actually the legislative in-  
 tention was to cover the cases both of the recruited em-  
 ployees and transferred employees. As was held by the  
 Benchings of the Supreme Court in *M. K. Ranganathan  
 v. Govt. of Madras* (1)—

"The statement of objects and reasons is certainly  
 by not admissible as an aid to the construction of a  
 statute. But it can be referred to for the limited  
 purpose of ascertaining the conditions prevailing  
 at the time which attended the passing of the bill  
 to introduce the same and the gravity and urgency  
 of the evil which he sought to remedy."

Clause (3a) which thus got into the body of the Act  
 cannot be read to show that clause (3) did not apply to  
 the case of transferred employees. In fact it seems to  
 prove that it actually so applied but any doubts in that  
 behalf were removed.

In our opinion, therefore, clause (3) already covered  
 the case of transferred employees and clause (3a) has  
 been introduced simply for the sake of stating all doubts  
 which otherwise might have existed in that behalf.

There is another reason also on account of which we  
 have no doubts that the corporation power of the acts







made under sub-section (1). The learned Judge approving the decision in *Shankh Datt*'s case (1) held that the customs specifically enumerated in sub-section (2) have directly abrogated the order itself as passed under sub-section (1). Now even the impugned regulations though purporting to have been made under clause (b) of sub-section (2) of section 49 of the Act are really made under sub-section (1); thus if sub-section (1) gives power to the corporation—a fact not disputed to make regulations in the case of transferred employees then they will be within the competence of the corporation.

The report on which some stress was laid and which was provided with the learned Chief Justice in the case of *S. K. Chatterjee v. General Manager, Life Insurance Corporation of India, Lucknow Division* (2), was later the reference to the Legislature to the regulations to clause (b) of sub-section (2) of section 49 affected their validity. There are two answers to this question. One is that according to the conclusion we have reached about the true meaning and scope of clause (b) the same covered the case of transferred employees as well. The second answer is, supposing for a moment that clause (2) does not cover their case, this statement is that clause (2) will not affect the validity of the order which has to be considered on its substance and not its form. Their Lordships of the Supreme Court observed with approval in the case of *P. Radhakrishnan v. Union of India* (3) that when an authority passes an order which is within its competence it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within its powers under any other rule and that the validity of an order should be judged on a consideration of its substance and not its form. Again

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(1) 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

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considered the view held by the learned Chief Justice but with profound respect we cannot agree with him. The aspect that the regulations were framed under sub-section (ii) of section 43 and not under any provision in sub-section (i) was not placed before him. The issue in the case before him was whether clause (ii) as so language covered the case of transferred employees and he held the view, with which also we respectfully disagree, that the clause was inapplicable to transferred employees. Disagreeing with the above decision we are of the opinion that the corporation has the power to make regulations in the case of transferred employees and further that the impugned regulations are applicable to them.

44.  
The learned  
Chief Justice  
has held that  
the clause  
does not apply  
to transferred  
employees.  
We respectfully  
disagree with  
him.  
Tribunal.

We may now revert to a consideration of the question whether the suspension order by the Zonal Manager was within his competence. The learned Counsel for the respondent has tried to support it on two independent grounds. Firstly, he has relied on section 22 of the Lok Insurance Corporation Act, 1958, which armed the Zonal Manager with the power of superintendence and discipline over the zonal office and secondly, on regulation 13 read with regulation 43. The relevant portions of section 22 have been quoted earlier and it will appear from it that superintendence and direction of the affairs and business of a zonal office can be exercised by the corporation or the Zonal Manager. That such an environment has been made in favour of the Zonal Manager is question is not in dispute before us. What is concerned is whether the Zonal Manager will be seared of the superintendence and direction conferred to him power the power to suspend an employee in a zonal office in which office the passenger happened to be attached. The scheme of the Lok Insurance Corporation Act in the matter of management is to be found in Chapter V of the Act. Section 18 makes provision for the establishment of a zonal office one of which is



able to have. The suspension of an employee pending inquiry into charges against him is certainly a matter which he will be competent to order. Therefore, upon a reading of section 25 itself we are satisfied that the Postal Manager had the power to make the suspension order. At the same time, we have not been shown or considered that the order passed by him was otherwise flawed.

In the above view of the matter it is not necessary for us to discuss the second ground on which the learned counsel for the corporation has supported the particular order.

In view of the above discussion the respondents order cannot be held to be invalid. In the result, therefore, the relief asked by the petitioners cannot be granted. As to that part of the case which concerned the inquiry on the charges contained by respondent no. 1 the parties have agreed as a mutual arrangement which has been reproduced in an earlier part of this judgment. We need, therefore, make no further order that direct the respondents to give effect to the arrangement before mentioned agreed to between them. No order is made as to costs. The case order is withdrawn.

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## APPELLATE CIVIL

Between Mr. Justice Oak and Mr. Justice Swaminath



RAJENDRA NATH BAZDAN (Deceased)

vs.

SRIMATI LALLI DEVI (Plaintiff)

H. F. (Temporary) Control of Rent and Eviction Act, 1917.  
 S. 3 and Transfer of Property Act, 1882. S. 13 and Section 13  
 of the Transfer of Property Act, 1882. S. 13 of the Transfer of  
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 Property Act, 1882. S. 13 of the Transfer of Property Act, 1882.

Section 3 of the Rent Control and Eviction Act, 1917, has no effect  
 of operating or overriding the provisions of sections 13 and  
 Transfer of Property Act. The two provisions are independent  
 of each other and are operative in their own respective fields.

In order to have an effective remedy of operation through  
 a court of law, the tenant has two objects to overcome. In  
 the first place he must demonstrate the tenant's right of the  
 right mentioned in the Transfer of Property Act. Without  
 demonstrating tenant's right of the right mentioned in the  
 Transfer of Property Act, the tenant's right of the right mentioned  
 in the Transfer of Property Act is not enough. If U. P. Act, III of 1917  
 applies and he wants to open the tenant through a court, he  
 has to comply with the provisions of s. 3 of that Act, also.  
 If one of the conditions mentioned in clause (c) of that  
 section seems to him to be a condition, the provisions of the  
 Transfer of Property Act, 1882, he has to comply with that  
 condition. Both these conditions can be, however, either in the same  
 case or in different cases, one after the other. They appear  
 to be nothing in either of the two provisions, which, very  
 rarely, the requirement of one must be made before the other.  
 The answer is: It is possible that s. 3 of U. P. Act, III of  
 1917 will be put a condition not on the tenant's right to  
 demonstrate the tenant's right, but on his right to file a suit for  
 the operation of the tenant as a consequence of the dispropor-

tioned above.

Second Appeal No. 116 of 1925 from a decree of  
 H. B. Agarwalla, Civil and Sessions Judge, Bareilly  
 dated 14th August, 1925.

The facts appear in the judgment.

M. J. Prasad, for appellant.

S. B. Agarwalla, for respondent.

—Sitting at Lucknow.



The judgment of the Court was delivered by—

SARASWATA, J.—This is a tenant's second appeal and the sole point sought to be raised relates to the validity of the notice of ejection. The second appeal came up first before Mr. Justice Narain, who found that the writ has not interfered so that he might require the reconsideration of the decision in *Ram Krishna Prasad v. Mahammad Fatah* (1). He, therefore, referred the appeal to a Division Bench. That is how the appeal is now before us.

The facts are simple and can be briefly stated. The appellant was a tenant of the premises in question on Rs. 12 per month. A notice under section 106 of the Ejectment of Property Act was served upon him determining his tenancy with effect from the 31st of October, 1934. By the same notice he was also required to pay up the arrears of rent due from him within 30 days of the receipt of the notice. The notice was received on the 10th of September, 1934. Thus, though his tenancy stood determined with effect from the 31st of October, 1934, the appellant was given time till the 10th of that month for paying the arrears. The notice not being complied with the landlord filed a suit for ejectment and recovery of arrears of rent. He also claimed damages for the use and occupation in respect of the period subsequent to determination of the tenancy. The suit was contested mainly on the ground that the notice was invalid. The plea was overruled by the trial court which decreed the suit. An appeal to the Additional Civil Judge being infructuous the tenant filed the present second appeal.

When the second appeal was argued before Mr. Justice Narain it was urged on the basis of the decision in *Ram Krishna Prasad v. Mahammad Fatah* (1) that the appellant having been given time till the 10th of

1934  
to pay the  
arrears of  
rent, the  
notice was  
valid.







<sup>1</sup> Learned Counsel for the appellant in this application urged that, in view of the long interval of years between the 19th October, 1949, when the defendants became liable for notified defaults and July 11, 1949, when the suit was filed it must be taken that the plaintiff had waived her right to sue. It is however settled law that a mere permission obtained by the landlord under section 9(a) of the U. P. (Temporary) Rent Control and Eviction Act does not entitle him to file a suit for permanent ouster away. He has still to serve a notice on the tenant under section 106 of the Transfer of Property Act. This position was affirmed in a case of this Court in *Khuramul v. Ishtari Lal* (1) where the following remark was made:

"Where a notice is served and the tenant fails to make payment within the time allowed, the parties are referred to the general law and the landlord is entitled to sue after giving the requisite notice."

The notice given in the present case to the defendants under section 106 of the Transfer of Property Act would not only account for part of the interval of time between the aforesaid dates but serve as strong evidence of the plaintiff's intention to terminate the lease and disregard all idea of a waiver on her part."

On the other hand in a more recent case of *Path Ram v. Mitara Lal* (2) permission was granted under section 9 of the Rent Control and Eviction Act, but a notice for permanent under the Transfer of Property Act was issued before the permission could become effective. When subsequently a suit for permanent was filed it was dismissed on the ground of irregularity of the notice and the defence pleaded was that the tenant had been treated as a tenant when the landlord had no right to eject the tenant. It was urged that a notice

(1) 10 All. 414, 415.

(2) 10 All. 441, 442.



was paid the right to file a suit would not have come into existence and his notice of determining the tenancy would have proved abortive, but if the default was made and the suit was not paid within the period as the statute had already been determined the right of suit also came into existence and the landlord could file a suit and get his remedy of ejectment.

We are, therefore, unable to agree with the conclusion of the appellate that the action of ejectment in the present case was defective. The suit could not, therefore, fail on that account. The decree passed by the courts below thus appears to be correct. The appeal must fail and is dismissed with costs.

*Appeal dismissed.*

## (FULL BENCH) APPELLATE CIVIL

Before the Honorable M. C. DeWitt, Chief Justice,  
Mr. Justice Rogers and Mr. Justice Hines\*

THE CHIEF COMMISSIONER OF FOREST, U. S.  
vs. GEORGE W. LYALL (Respondent)

D. A. LYALL (Respondent)

**Finalist Briefs.** Vol. II, p. 12-1 and 13—*Commissioner of a Government post occupied by preliminary arrests... Status of arrested Governmental agents, how determined—If arrested by mere lapse of time—Whether arrested "in error" or "from preliminary arrests"—Duration of preliminary confinement*

A Governmental arrest on probation is not to be deemed to be continued on the expiry of the period of his probation, if no order confirming him in his confinement goes or extending his period of probation, nor passed by the competent authority, and that the order confirming the officer, being dated on appointment or extending the period of probation, may be passed even after the expiry of the period of probation provided the detention is based on the work and conduct during the period of probation.

The confirmation to a Government post occupied by a preliminary arrest is not a right which accrues to him upon maturity on the expiry of the period of probation. He acquires the status of a confirmed Governmental servant on that post only as a result of an affirmative order passed by the competent authority. The period of probation is a period of trial which affords an opportunity to the authority to observe the performance of the servant on the post and to make up its mind on the expiry of the said period whether the servant is fit to be confirmed or not.

In other words, from the mere lapse of the period of probation it cannot be assumed that the servant has been confirmed, or such an assumption would mean an estimate of the period of probation, which is not permitted.

If within a reasonable time the authority does not pass an order confirming the servant or extending his period of probation or confirming his service, it will still not lead to the conclusion that he has been confirmed. No remedy could apply to an appeal for a maintenance calling upon the authority to pass an appointment order within a certain time.

\*Sitting in London.



In the absence of a provision in the charter or rules of court, a sentence cannot be presumed to have been confirmed upon the expiry of any term unless the expiry of the period of probation.

More expiry of the period of probation is not enough for confirmation; the person must have passed all prescribed tests and his name must have been found to be fit in the estimation of the Governor. The absence of these conditions is quite inconsistent with the doctrine of automatic confirmation.

A Government servant at no stage requires a status of a "quasi-prisoner" or even of a "prisoner." He can be either a probationary servant or a confirmed servant, if so made by the authority concerned.

*Cause dismissed.*

Special Appeal No. 9 of 1916 against the order of Taxation. J.—heard and September, 1922, in Civil Miscellaneous Writ No. 22 of 1922.

The facts appear in the judgment.

*Additional Standing Counsel, for appellants.*

V. Anandji, for respondents.

The judgment of the Court was delivered by—

**HARRISMAN, J.**—The questions raised in the Full Bench for answer are—

"Whether a Government servant on probation is to be deemed to be confirmed on the expiry of the period of his probation if no orders confirming him in his substantive post or extending his period of probation are passed by the competent authority?"

It has arisen in a special appeal which has been preferred against a judgment of a learned single Judge of this Court allowing the writ petition filed by the respondents Shri B. A. Lyall under Article 101 of the Constitution. The special appeal was heard by a Bench of which two of us were members, and, as it was

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PART 2  
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is that the question is of importance and had been before referred to a larger Bench but could not be decided because of some reasons, which it is not necessary to state here, the matter has come up before the Full Bench.

The facts of the case in which this question has been raised have been fully set out in the judgments of the learned single Judge. They may only be briefly touched upon.

On the approval of the Public Service Commission, U. P., made in 1932, and, after necessary departmental training, Siva D. A. Loal respondent, was appointed as officiating Inspector in the Co-operative Department, U. P., on 19th April, 1934. Shortly after, in June, 1934, on his request, he was allotted to join Army service on a commissioned post, where he served till 1937. Then on his application in that behalf, he was selected for service in the Forest Department, U. P., in one of the vacancies reserved for War Service candidates. By an order, dated 25th March, 1937, the Raptiwar Co-operative Societies, U. P., permitted him to join the Forest Department retaining his position in the previous list of the Inspectors, Co-operative Societies, India. In fact, the respondent was confirmed as an Inspector in the Co-operative Department with effect from 1st October, 1938, vide order No. C. 122/ESTT, dated 17th January, 1939. After being selected for service in the Forest Department, the respondent underwent necessary training and was posted as an Assistant Conservator of Forest on probation for two years from 1st April 1939. The period of probation expired on 31st March 1941 but no orders for his confirmation on this post were passed. No orders were either passed within one year from 1st April, 1939, extending his period of probation. His term on his permanent post

in August 1933, Cooperative Societies, had already been suspended in 1932 by an order passed under rule 14(b) of the Fundamental Rules, since he was deputed to write on a subordinate post in the Forest Department. However he was still serving as an Assistant Conservator of Forests in August, 1933 when charges were framed against the respondent by the Chief Conservator of Forests U. P., and he was asked to explain why he should not be removed from service. The explanation submitted by the respondent to these charges was found unsatisfactory and he was discharged from service of the Forest Department with effect from 17th February, 1934. This order was countermanded on Jan. 22, 1934. The respondent made a representation against it to the U. P. Government and the order of discharge passed by the Chief Conservator of Forests, U. P., was set aside as appears from notification no. 4418/XIV—48630, read with 5130/XIV—48630 dated 8th June, 1934 and G. O. no. 174 G/XIII-G, dated 12th January, 1935 (paragraphs I and A respectively) but it was directed by the Government that the respondent be treated as having reverted to the Cooperative Department from February 14, 1934, and that disciplinary proceedings be taken against him at once by placing him under suspension from the date of his reversion to the Cooperative Department. His period of probation was also extended up to 15th February, 1934, i.e. the date of his discharge from the Forest Department. In accordance with the above direction of the Government, the Registrar, Cooperative Societies, U. P., placed Shri Lyall under suspension with effect from 14th February, 1934, and framed fresh charges against him on 18th April, 1935. Shri Lyall filed his written explanation to these fresh charges and desired to cross-examine the witnesses who were expected to depose against him. He also filed a list of defence

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 of U. P.  
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 reverted  
 to the  
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 Department  
 from  
 February  
 14, 1934.

with  
The Forest  
Department  
against  
the U. P.  
Forest  
Service  
and  
the  
Co-operative  
Societies.

whereas, The Deputy Registrar, Co-operative Societies, Kanpur, was appointed to conduct the enquiry into the aforesaid charges against the respondents. Those who were delinquent in the disposal of the charges became the evidence to support those charges was to come from the Forest Department, whereas the enquiry was being conducted by the Co-operative Department, and the Co-operative Department sought the assistance and co-operation of the Forest Department in the matter through the intervention of the Government.

While the correspondence was continuing on the subject between the two departments and the Government, the respondents filed a writ petition in the Court under Article 106 of the Constitution on 29th December, 1937 in which he prayed that a direction, writ or order in the nature of the writs or orders be issued against the Registrar, Co-operative Societies, Kanpur, reversing his order of suspension as well as further proceedings taken thereafter against the appellants. He further prayed that a writ, direction or order in the nature of mandamus be issued against the Chief Conservator of Forests, U. P., requiring him to give him a posting in the U. P. Forest Service. In the alternative, he prayed for a suitable writ, direction or order against the Registrar, Co-operative Societies, U. P., Lucknow, and the Deputy Registrar, Co-operative Societies, U. P., Benares, and the State of U. P. requiring them to conduct a proper enquiry into the charges levelled against him as to how or why could he be suspended against him.

The learned single Judge who heard the writ petition held that the order reversing the respondents in the post of Inspector of Co-operative Societies and the subsequent order of the Registrar, Co-operative Societies, suspending him from service was invalid. He further held that the disciplinary proceedings being

taken against the respondent, by the Registrar, Co-operative Societies, were without jurisdiction. In the result he quashed the order of revocation, the order of suspension, and the disciplinary proceedings which were being taken against the respondent by the Registrar, Co-operative Societies.

Appeared by the abovesaid judgment of the learned Single Judge, the Chief Conservator of Forests, U. P., the Registrar, Co-operative Societies, the Deputy Registrar, Co-operative Societies and the State of U. P., who were the opposite parties in the writ petition of the respondent, have filed a special appeal, out of which this reference has arisen.

The respondent's case was that on 25th April, 1945 when the Registrar, Co-operative Societies, framed charges against him in accordance with the directions of the Government, he (respondent) had ceased to be in the service of the Co-operative Department and that from 1st April, 1945, the date on which his period of probation expired, he was a confirmed Assistant Conservator of Forests under the Forest Department hence the action of the Registrar, Co-operative Societies, in suspending the respondent from service and conducting an enquiry into the charges against him, was without jurisdiction. On behalf of the appellants it was contended that the respondent had been confirmed in its (Inspector of Co-operative Societies) on 1st October, 1944 that his term had only been suspended in that post since he was permitted to serve in the Forest Department and being still in service in that department, he was amenable to the jurisdiction of the Registrar, Co-operative Societies. It was further contended that as no orders confirming the respondent as an Assistant Conservator of Forests had been passed by a competent authority, he did not acquire the status of a confirmed servant in the Forest Department.

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 Counsel  
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in  
England  
and  
Wales,  
1971,  
p. 100.

Setting on rules 124 and relevant parts of rule 26 of the Financial Handbook, Volume II, quoted below —

" 124. Unless in any case it be otherwise provided in these rules, a government servant on substantive appointment to any permanent post acquires a lien on that post and cannot be held any less previously assigned on any other post."

" 26. (a) The lien of a government servant on a permanent post which he holds voluntarily shall be suspended if he is appointed in a substantive capacity—

- (i) to a casual post, or
- (ii) to a permanent post outside the cadre in which he is borne, or
- (iii) provisionally, to a post on which another government servant would hold a lien had his lien not been suspended under this rule."

and by reference to the facts of the case, the learned single Judge held,

(i) That the lien which the petitioner held on the post of the Inspector of Co-operative Societies had been suspended;

(ii) That the post which the petitioner held in the Forest Service was a permanent post; and

(iii) That his appointment thereto was in a substantive capacity.

He further held that because of the sequence of the petitioner's lien on the post of Inspector of Co-operative Societies, his appointment to the Forest Service was in a substantive capacity on a permanent post in his opinion; and the lien of a government servant is suspended on any post, because he has been voluntarily appointed in another permanent post, the

confirmed government servant does not possess any lien on his old post which is indeed suspended". Each, he was of opinion that "once a lien is accepted although it may not have terminated nevertheless for all practical purposes it does not exist". In view of the above reasoning, it appears the learned Judge was of opinion that the respondent's connection with the Co-operative Department, where he held a permanent post had completely ceased on the date when he was recharacterized by the Registrar, Co-operative Societies.

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On the question whether the respondent acquired the status of a confirmed servant in the Forest Department on the expiry of the period of probation of two years on 12 April, 1951, or that his period of probation should be deemed to continue even after that in spite of the fact that his period of probation had not been extended by any order passed within two years from the date of his appointment in the Forest Department, the learned single Judge held that there was no order extending the period of probation and that because his probation came to an end on 31st March, 1951, he would no longer be on probation after that. Regarding the other part of this contention, the learned single Judge held that during the interval which elapses after the expiry of the period of probation and before any orders for his confirmation are passed, he would be deemed to be "a quasi permanent servant" and that in such "a condition the government servant, though he may not be permanent in his post possesses his claim to continue in his post which claim is often known by the expression 'ten'".

In arriving to these conclusions, the learned single Judge referred to the provisions of rules 14, 15 and 16 of the U. P. Forest Service Rules, 1952, which are analogous to some of the rules of the Deputy Inspector

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 (The State  
 of Ohio  
 v. S. N. Sager  
 et al.)  
 100 F. 2d  
 1000 (6th  
 Cir. 1941)

of Schools Service Rules, 1942 and also referred to 122 of his earlier decision, *Superintendent Sowerby v. The State of Ohio* (1941) 5 N. Sager v. State of Ohio (1941) 100 F. 2d 1000. The case *Superintendent Sowerby v. The State of Ohio* (1941) 100 F. 2d 1000 is the Education Department and rule 14 of the U. S. Forest Service Rules is similar to rule 15 of the Deputy Inspector of Schools Service Rules of 1944 and likewise rule 16 of the U. S. Forest Service Rules, as identical to rule 19 of Ohio rules. In this case the question for decision was whether after expiry of the period of probation originally fixed, was it open to the Government to extend the period of probation by an order passed subsequently? The learned single judge held that the answer in this case would not be deemed to be on probation after the expiry of the period of probation and that the Government had no power under rule 15 of the Deputy Inspector of Schools Service Rules, 1944 to extend the period of probation retrospectively. The case of *S. N. Sager v. The State of Ohio* (1941) 100 F. 2d 1000 involved the interpretation of rules 13 and 14 of the U. S. Civil Service (Punitive Branch) Rules, 1941, and rule 15 of the Civil Service (Classification, Control and Appeal) Rules, which are identical to the relevant rules of the U. S. Forest Service Rules. Thus also the learned single judge was called upon to decide whether the period of probation can be extended retrospectively after its expiry. The period of probation in this case was that of two years which expired and had not been extended within three (3) years. The learned single judge held that the rule, no doubt, lays down that the period of probation shall be two years and it can be extended but the order granting extension must specify the date up to which it is done and that it should appear in any date during or at the end of the probation indicating that the officer



has not made sufficient use of the opportunities afforded to him during the period of probation. According to the learned Judge, the period of probation, which is a period of trial, is thus a fixed period and though it can be extended in appropriate cases it has nevertheless to be a fixed period and not continue indefinitely.

On behalf of the respondent, reliance was also placed on a Bench decision of this Court reported in State of U. P. v. Dr. Kanak Ram Anand, (x). In this case Dr. Kanak Ram Anand, who held the degree of M. B. B. S., was appointed to the State Medical Service on probation for two years, which expired on the 17th June 1951. No formal orders were passed confirming him on the post and he continued to serve on it till August, 1954. During the period of probation, he had appeared before the State Medical Board and he was found fit for appointment in spite of the fact that he suffered from stammer. He was required to appear before the State Medical Board again on 3rd July, 1954, and on this occasion the Board considered him "to be completely and permanently incapacitated for further service on any account in consequence of impediment of speech and to have lost all earning capacity". As a consequence of this report, the State Government discharged Dr. Kanak Ram Anand from service with effect from the date of the report. After unsuccessfully agitating the matter before his department and then before the Government, the respondent preferred a writ petition which was allowed by a learned single Judge of this Court and the order of discharge was set aside. On appeal, the order passed by the learned single Judge was affirmed by a Bench. The leading judgment was delivered by MOONJEON, C.J. Interpreting rules of clause (b), 19 and 20 of the

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United Provinces Public Health Service Rules, quoted in that judgment and reproduced below—

(1) Persons directly appointed shall be on probation for two years and will draw a pay of Rs. 450 per annum during the first year and Rs. 500 per annum on completion of the first year of service. On confirmation they shall be placed in the Rs. 550 scale of the same scale of pay for further increments laid down in Rule 21 (a). Temporary or officiating service shall count towards probation.

(2) " " " " " "

19. The service of a probationer may be terminated by the Government at any time during the period of probation or at its end. The Government may also extend the period of probation in the case of any particular member for any further period up to one year.

20. A probationer shall be confirmed in his appointment when—

(a) he has completed the prescribed period of probation and

(b) the Government are satisfied that (i) he is sufficiently acquainted with all local conditions relating to public health, municipal and district organisations, the administrative work of local bodies, and the relations of these bodies to the various departments of the Government, (ii) he is otherwise fit for confirmation;

(3) all confirmations under this rule shall be notified in the Government Gazette " the learned Chief Justice held that—

"a person directly appointed (such as was the respondent) is appointed to a probationary post on

probation. The period of probation is otherwise two years but may in the case of any particular member—the use of the word ‘member’ in Rule 19 is significant—be extended for any further period up to one year, and during the period of probation the services of the member may be dispensed with at any time. There is no provision for the probationary period exceeding three years and in no case, in my opinion, can a member on probation after the expiry of that period or each reasonable time thereafter as is necessary for the Government to decide whether on a review of his work during the probationary period his services should be dispensed with.

“Rule 19 states the conditions subject to which a probationer shall be confirmed. It imposes a duty on the Government to confirm the probationer in the circumstances therein stated, and that duty is one which the Government has to perform if at all, at the expiration of the period of probation.”

“In the present case the Government did not confirm the respondent at the end of his period of probation. He subsequently was allowed to continue in Government service for three more years. In such circumstances it appears to me that there are only two possibilities, that respondent's further employment must be either permanent or temporary. I am disposed to think that the former view is the better, and that if the Government does not exercise its right under Rule 19 to dispense with a member of the service during or at the end of his period of probation, but retains him in its employment, it must be deemed to have confirmed him in his appointment. It is not however necessary for me to express a final opinion on this point.

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for, whichever be the correct view, a second question arises."

The other learned judge, who constituted the Bench, concurred with the result proposed by the learned Chief Justice, and did not express any opinion on the interpretation of the these rules. The State appeal was dismissed because of non-compliance with the requirements of Article 211 of the Constitution in discharging the respondents from service. On the question whether the respondents in that case acquired the status of a confirmed service successfully on the expiry of the period of probation and that, in probations period did not continue themselves, the learned Chief Justice also, as quoted above, did not express his final opinion because he himself observed: "It is not however necessary for me to express a final opinion on this point for, whichever be the correct view a second question arises", though he seemed inclined to hold that the probationary period did not extend beyond the time of its expiry.

Having considered the arguments addressed by the parties and the available case law on the subject we are of opinion that confirmation as a Government post occupied by a probationary service is not a right which accrues to him automatically on the expiry of the period of probation. He occupies the status of a confirmed Government servant on that post only as a result of an affirmative order passed in that behalf by the competent authority. The period of probation of a Government servant whether prescribed by rules or by an order, is a period of trial which affords an opportunity to the authority empowered to confirm him, to observe the performance of the servant on the post occupied by him and to make up its mind on the expiry of the said period whether the servant continued to fit to be confirmed on the post or not. The

competent authority may, if it feels inclined earlier than the servant is qualified to be confirmed and also if the rules permit, confirm him on the spot even before the expiry of the period of probation. It may also extend the period of probation (if the extension is permitted by the rules) before the expiry of the period of probation. It is, however, not bound by any rule to decide before the expiry of the period of probation whether to confirm him or watch his work and conduct for a further period and extend the period of probation. The very fact that Government servant is on probation for a certain period means that the confirming authority has a right to watch his work and conduct for the whole of the period of probation and then to decide whether to confirm him or to extend the period of probation in order to watch his work and conduct for a further period or to terminate his service. It is entitled to wait till the expiry of the whole of the period for watching his work and conduct to the fullest extent and then to consider whether he should be confirmed or not. It is entitled to receive reports about his work and conduct from officers immediately superior to him and to take a reasonable time to make up its mind. It is not bound by any rule to decide immediately, i.e. without the passage of any time, after the expiry of the period of probation, whether to confirm him or to terminate his service or to extend the period of probation. Some time must necessarily be taken in deciding what to do, and since it has a right to use the whole of the period of probation for watching his work and conduct, it follows that some time must elapse before it passes an order confirming him or terminating his service or extending the period of probation. In other words, from the mere lapse of the period of probation it cannot be assumed that the servant has been confirmed, such an assumption would

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means completion of the period of probation, which is not presumed. It is practically impossible to pass an order of revocation of service or extending the period of probation the moment the prescribed period of probation expires, and unless it is proved before the expiry of the prescribed period of probation (which means that the prescribed period of probation is completed) it will be practically impossible so terminate his service or extend the period of probation. If within a reasonable time the authority does not pass an order extending him or extending his period of probation or terminating his service he will still not lead to the assumption that he has been confirmed. His remedy would simply be to apply for a mandamus calling upon the authority to pass an appropriate order within a certain time. What is a reasonable period within which the authority must pass an order not way, as neither is a question of fact depending upon the circumstances and need not be considered here because the respondent never sought a mandamus calling upon the confirming authority to pass an order in respect of confirmation. If a Government servant claims to be presumed to have been confirmed the moment the period of his probation expires without an order extending it or terminating his service being passed he cannot be presumed to have been confirmed at any subsequent stage also without an express provision to that effect. In the absence of a provision to the contrary or rules of service he cannot be presumed to have been confirmed after the lapse of six years since the expiry of the period of probation.

Confirmation does not depend upon mere passage of time; it depends upon the Government servant being found to be fit for confirmation. What is required is a finding, express or implied, that he is fit to be confirmed. If after the expiry of the period of probation

an order simply confirming him is passed it may be implied to signify a finding that he is found fit to be confirmed. From no other circumstances such a finding can be implied and without it no confirmation can come into existence. It cannot be disputed that mere expiry of the period of probation does not lead to the inference of fitness for confirmation, the confirming authority must actually judge him to be fit.

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So far we have dealt with the general aspect. In this particular case there is one more reason for our rejecting the doctrine of automatic confirmation and it is that rule 16 of the U. P. Forest Service Rules requires certain conditions to be fulfilled before a person is confirmed on the post of Assistant Conservator of Forests. It reads as follows :

“(16) A person on probation shall not be confirmed in his appointment unless—

(i) he has completed the prescribed period of probation ;

(ii) he has passed all the tests prescribed in rule 15, or has been exempted from passing such tests ; and

(iii) the Governor is satisfied that he is fit for confirmation in other respects.

(3) If the period of probation of a person is extended on account of failure to pass the examination prescribed in rule 15, the confirmation shall take effect on passing the examination, from the first day of the month following that in which the examination is held.”

Where expiry of the period of probation is not enough for confirmation the person must first pass all prescribed tests and he must have been found to be fit to the satisfaction of the Governor. The existence of

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these conditions is quite inconsistent with the doctrine of automatic confirmation.

In *State of Punjab v. J. Subhansingh Singh* (1) the respondent Subhansingh Singh, who was a permanent Tahsildar, was promoted to a post in the Punjab Provincial Civil Service and was appointed on probation for eighteen months on 30th May, 1942. He was reverted to his permanent post on the 20th May, 1944. No orders whatsoever had been passed in this period either confirming him on the higher post or extending his period of probation. The respondent filed a writ petition under Article 226 of the Constitution and a learned single Judge of that Court granted a direction that the State of Punjab should desist from putting into execution the order reverting him to his permanent post without complying with the provisions of Article 311 of the Constitution. On an appeal to the State of Punjab, a bench of that Court repelled the respondent's contention "that in the petitioner's case, on removal from the higher service immediately on the completion of the probationary period of 18 months and as he was allowed to continue in his appointment several years thereafter without an express order extending the period of probation, it must be assumed that he was appointed substantively to the Provincial Civil Service on the conclusion of the period of probation". It was further found that there was no rule which enabled the court to hold that the probationary period had expired into a permanent appointment by efflux of time. Their Lordships did not subscribe to the proposition that as soon as the servant became qualified for substantive appointment, he must be deemed to have been automatically confirmed. Lastly, their Lordships held that the respondent in that case "could not acquire the status of a permanent member of the



proper instructions and that he could have required this status only if the competent authority had chosen to perform a scientific or an otherwise act.

In *R. Parakeedipathy v. Deputy Inspector General of Police, Western Range, Coimbatore* (1), which was an appeal against an order passed by a learned single judge dismissing the appellant's writ petition, a contention was advanced on behalf of the appellant that as soon as the period of probation came to an end, the appellant automatically became a full member of the service. The Bench consisting of P. V. Rajamannar, C. J. and P. NAGESH PANDIA, J. repelled this contention. Their Lordships held that it is not enough to say that the period of probation had come to an end on a particular day but it was an another thing to say that the period of probation in the case of Government servant was found satisfactory and he was automatically full member of the service. In the opinion of their Lordships, before the latter could be done, there should have been a finding by the concerned superior officer that his probation has been found to be satisfactory. Proceeding further, their Lordships held—

"Necessarily the determination of this question can only be taken up after the period of probation has come to an end. It is left up to us, then, that the superior officer has no right even to come to a conclusion whether the probation has been satisfactory and whether he is entitled to be admitted as a full member of the service."

With respect we find ourselves in complete agreement with the opinion expressed in the decisions of the Punjab High Court and the Madras High Court noted above and we are unable to agree with the decision of the learned single judge of our

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for no other reason, he was not eligible for confirmation as an Assistant Conservator of Forests even if the period of probation had expired without any order mandating it or terminating his service.

On behalf of the respondent, it was argued that his service with the Co-operative Department should be deemed to have terminated because in April, 1932, when he was asked to revert to that department, he refused to do the Government through the Forest Department that he would not like to revert to his post in the Co-operative Department. We do not see any force in this argument. As noted above, his lien on the Co-operative Department was only under suspension. It had never been terminated. In our opinion, his service with the Co-operative Department did not cease to exist merely on the expiration of the respondent's leave pay to return to his post in that department because he was at that time serving in the Forest Department. In order to hold that the respondent's service with the Co-operative Department should have been deemed to have ceased, it suffices that he would not like to return to that department should have been followed up by an order of the competent authority of the Co-operative Department terminating the respondent's lien on that department. No such order was passed. Mere intimation on that behalf on the part of the respondent could not have the effect of terminating his service in the Co-operative Department where he held a permanent post and would be deemed to be in the service of the Co-operative Department when charge-sheeted in 1934. It may very reasonably have been interpreted by the Co-operative Department to mean that he did not want to revert to the department at that time but would like to continue in the Forest Department.

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World  
Report**

1961  
 THE GOVERNMENT  
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 LONDON  
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 ENGLAND

the Government Department to be confirmed in such confirmation.

As a result of the discussion and findings given above, our answer to the question referred to us is that a Government servant on probation is not to be deemed to be confirmed on the expiry of the period of his probation, if no orders confirming him in his substantive post or extending his period of probation are passed by the competent authority and that the orders confirming the officer, terminating his appointment, or extending the period of probation may be passed even after the expiry of the period of probation provided the decision is based on the work and conduct during the period of probation.

*Reference made*

## SUPREME COURT

## APPELLATE CIVIL.

Before the Hon'ble Mr. Justice Gajendragadkar, the Hon'ble Mr. Justice Sarkar, the Hon'ble Mr. Justice WILKINS, the Hon'ble Mr. Justice Das Gupta and the Hon'ble Mr. Justice Aggarwal

THE SWADESHI COTTON MILLS CO. LIMITED  
(Appellants)

VERSUS  
THE STATE

THE STATE INDUSTRIAL TRIBUNAL, U. P.  
AND OTHERS (Respondents).

[ON APPEAL FROM THE HIGH COURT AT ALLAHABAD.]

**Industrial disputes in U. P.—Power of State Government regarding compliance or non-compliance of industrial disputes—Constitutionality of**

State Government setting up Conciliation Boards and industrial tribunals without any notice in the order as to its jurisdiction about the conditions of resolution provided in public safety, etc.—Validity of the order—U. P. Industrial Disputes Act (No. 13, 1947) s. 3 of (2) (3) and (4).

S. 3 of the U. P. Industrial Disputes Act empowering the State Government under sub. (2) to appoint industrial tribunals to refer industrial disputes for conciliation or arbitration and to pass incidental and supplementary orders in that behalf it is in its opinion, necessary or expedient in the interest of public safety, convenience or order, has been constitutional and does not violate from the rule of executive delegation. All that has been left to the Government by that section is to carry out by subordinate rules or orders the policy and purposes of the Legislature defined in the Act within the prescribed limits and there is, therefore, no delegation of essential legislative functions to the State Government.

The orders of the State Government under s. 3 of the Act setting up conciliation boards and industrial tribunals for settlement of industrial disputes are valid and effective although they did not declare therein that the State Government had assumed itself to be the necessary or expedient in the interest in the interest of public safety, convenience, etc.

Where direct constitutional provisions have to be construed before a subordinate authority can pass an order (or a resolution or all the character of subordinate legislation) it is not necessary that the satisfaction of those conditions must be recited in the order itself unless the Statute requires it. Though it

1938  
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 of Texas  
 306 U.S. 1  
 1938

It must be said that it should be so, for in this case the presumption that conditions were created would immediately arise and the burden would be thrown on the person challenging the fact of causation to show that what is alleged is not correct. But even where the actual is not shown on the face of the writ, the writ will not become illegal or void and only a further burden is thrown on the defendant passing the burden to satisfy the writ by other means. In this case although an affidavit filed in support before the Supreme Court did, the conditions precedent were complied with. That would cure the defect and render the writ valid and enforceable.

Continued discussion.

Civil Appeal No. 377 of 1938 from the judgments and decrees, dated the 6th March, 1938 of the High Court at Allahabad in Civil Misc. Writ Petitions Nos. 387 of 1937.

Civil Appeals connected with nos. 387 to 393 of 1938 R. J. Hickey and others v. State of Uttar Pradesh and others from the judgments and decrees dated the 1st February, 1938, of the Allahabad High Court in Civil Misc. Writ Petitions nos. 381 (Lucknow Bench), 375, 384, 387, 390, 391 and 393 of 1937.

The basis appears in the judgments.

G. B. Pathak, Senior Advocate (P. P. Pathak, Advocate with him) for the appellants (in Civil Appeal No. 377 of 1938).

G. B. Agarwala, Senior Advocate (G. C. Mathur and C. P. Lal, Advocates with him) for Respondents, nos. 1 to 4 (in Civil Appeal No. 377 of 1938).

J. P. Gopal, Advocate for Respondent No. 5, H. D. Saxena, Additional Solicitor-General for India (N. S. Saxena, Advocate and M. S. S. N. Saxena, J. B. Datta, Advocate, Rameshwar Nath and P. L. Patra, Advocates of him) Rayender Narain and Co. with him) for the appellants (in Civil Appeals nos. 387 to 393 of 1938).

G. B. Agarwala, Senior Advocate (C. P. Lal, Advocate with him) for the Respondent No. 1 (in Civil Appeals nos. 387 to 393 of 1938).

*Shivani Lal and Shivani Bhagwan, Sundry* for Respondent no. 4 (in Civil Appeal no. 380 of 1958)  
*J. P. Goyal, Advocate, for Respondent no. 4 in Civil Appeal nos. 368 and 380 of 1958)*

*S. C. Das, in person for Respondent no. 4 (in Civil Appeal no. 387 of 1958)*

1958  
 For  
 Respondent  
 No. 4  
 Mr. Das  
 For  
 Respondent  
 No. 4  
 Mr. Goyal

The following judgment of the court was delivered by—

**WATSON, J.**—This group of appeals raises a question about the constitutionality of s. 3 of the United Provinces Industrial Disputes Act No. XXVIII of 1947 (hereinafter referred to as the Act) and the validity of two general orders passed thereunder on March 13, 1951. The appellants are certain industrial concerns. There were disputes between them and their workmen which were referred for adjudication to industrial tribunals alleged to have been set up under the general orders of March 13, 1951. Certain awards were passed which were taken on appeal by the present appellants to the Labour Appellate Tribunal and decided there also. They then filed petitions under Art. 226 of the Constitution in the Allahabad High Court challenging the constitutionality of s. 3 of the Act and the validity of the two general orders passed on March 13, 1951, by which industrial tribunals were set up. The High Court held that s. 3 of the Act was constitutional. It however held that the two general orders, dated March 13, 1951, were invalid but it went on to hold that orders of reference passed in those cases were special orders as envisaged under s. 3 of the Act and were therefore not invalid. In consequence it dismissed the petitions. The appellants then applied for and obtained certificates for leave to appeal and that is how the matter has come up before us.

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The  
Government  
Lawyer  
Mr. J. C. van  
der  
Walt  
The State  
Attorney  
Mr. J. C. van  
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It is necessary to set out the facts further in respect of these appeals, as the only points argued before us are about the constitutionality of s. 3 and the validity of the general orders of 1951 and also of the references made in these cases. It is not disputed that if the appellants fail on these points their appeals in this Court must fail. We shall, therefore, first take up the question of the constitutionality of s. 3 of the Act.

The relevant provisions of s. 3, in 1951, with which we are concerned are in these words—

"It is the opinion of the State Government, to be necessary or expedient in so far as securing the public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, is met, by general or special order, make provision—

(i) for appointing industrial courts;

(ii) for referring any industrial dispute for conciliation or adjudication in the manner provided in the order;

(iii) for any industrial or supplementary matters which appear to the State Government necessary or expedient for the purposes of the order.

The main contention of the appellants is that s. 4 is unconstitutional as it delegates essential legislative functions to the Government, so far as the (i), (ii) and (iii) are concerned. Reliance in this connection is placed on the following observations of KILMER, C. J. in *In re The South African Act, 1912* (1), where he was considering the meaning of the word "delegation"

(1) 1912 S. C. B. 121, 122.



"When a legislative body passes an Act it has exercised its legislative function. The essentials of such function are the determination of the legislative policy and its formulation as a rule of conduct. These essentials are the characteristics of a legislature by itself. . . . These essentials are present, when the legislature specifies the basic considerations of fact, upon determinations of which, from relevant data, by a designated administrative agency, a criterion does its statutory command is to be effective. The legislature, having thus made its law, it is clear that every detail for working it out and for carrying the enactment into operation and effect may be done by the legislature or may be left to another subordinate agency, or to some executive officer. While this also is sometimes described as a delegation of legislative power, in essence it is different from delegation of legislative power which means a determination of the legislative policy and formulation of the same as a rule of conduct."

ref.  
The  
National  
Council  
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America,  
Washington, D. C.  
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To the same effect were the observations of Monaghan,  
] in that case at p. 918.

"The essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy as a binding rule of conduct. It is upon to the legislature to formulate the policy, as broadly and with as little as possible of such details as a check, proper and it may delegate the rest of the legislative work to a subordinate authority who will work out the details within the framework of that policy. So long as a policy is laid down and a standard established by statute no constitutional delegation of legislative power is involved in leaving to administrative officials the making of subordinate rules within

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prescribed limits and the determination of facts to which the legislation is to apply.”

What we have to ask therefore is whether the legislature in this case performed its essential legislative function of determining and choosing the legislative policy and of formally casting that policy into a binding rule of conduct. It was open to the legislature to formulate that policy as broad and wide as it liked or as much detail as it thought proper. Thereafter once a policy is laid down and a standard established by statute, there is no question of delegation of legislative power and all that remains is the making of subordinate rules within prescribed limits, which may be left to selected executive servants. If therefore the legislature in casting s. 3 has chosen the legislative policy and has formally enacted that policy into a binding rule of conduct, it could leave the rest of the details to Government to prescribe by means of subordinate rules within prescribed limits. Now s. 3 lays down under what conditions it would be open to Government to act under that section, it also lays down that the Government may act by passing general or special orders, once those conditions are fulfilled; it also provides what will be contained in the general or special order of Government. The power given to Government is later also to appoint in judicial courts to settle up industrial disputes for conciliation or arbitration in the manner provided in the order, and to make any incidental or supplementary provision which may be necessary or expedient for the purposes of the order. Thus the legislature has enacted its policy and has made it a binding rule of conduct. It has also indicated when the Government shall act under s. 3 and how it shall act. It has further indicated what it shall do when it acts under s. 3. In these circumstances we are of the opinion that it cannot be said that the delegation made by s. 3 is excessive and



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employees and employers of industrial concerns. We have already said that the conditions under which the order will be passed have also been set out in the opening part of s. 3 and how the Government will act is also set out, namely, by referring any industrial dispute that may arise for conciliation or adjudication. As to the power of the industrial court that is our opinion (also provided by s. 3, namely, that an industrial court will adjudicate on the industrial dispute referred to it. Therefore all that was left to the Government to provide was to set up machinery by means of a general order which has the force of subordinate rules to carry out that legislative policy which has been enacted in broad terms in s. 3 and has been formally enacted into a binding rule of conduct. We are therefore of opinion that s. 3 is not unconstitutional in any manner, for there is no delegation of essential legislative function thereunder. All that has been left to the Government by that section is to provide by subordinate rules for carrying out the purpose of the legislation. We must, therefore, reject the contention that s. 3 is unconstitutional on the ground that it suffers from the vice of excessive delegation.

This brings us to the validity of the general order no. 413 of March 13, 1947, passed under s. 3. The preamble to that order was in these terms:

"In exercise of the powers conferred by, clauses (4), (5), (6) and (7) of section 3 and section 8 of the U. P. Industrial Disputes Act, 1947 (U. P. Act no. XXVIII of 1947), and in pursuance of Government Order no. 38-313/XXIII, dated March 20, 1947, the Governor is pleased to make the following order, and to direct, with reference to section 13 of the said Act, that notice of this Order be given by publication in the official Gazette."

Then follows the order setting up conditions boards for the purpose of coordination and industrial tribunals for the purpose of adjudication. The main contention on behalf of the appellants is that s. 3 prescribes certain conditions precedent before an order could be passed characterizing and those conditions precedent must be stated in the order in order that it may be valid exercise of the power conferred by s. 3. Now there is no doubt that s. 3 gives power to the State Government to make certain provisions by general or special order, if, in its opinion, it is necessary or expedient so to do for securing public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment. The framing of such opinion is a condition precedent to the making of the order. The principle is the usual one, also does not require a recital that the State Government had formed such opinion before it made the order. It is therefore contended on behalf of the appellants that the orders were bad as the condition precedent for their formulation was not recited in the orders themselves. At a later stage the appellants also contended that in any case the orders were bad because in a fact they were passed without any intimation of the State Government as required under s. 3, though no affidavit was filed by the appellants in this behalf in support of this averment. Unfortunately, the State also filed no affidavits to show that the conditions precedent provided in s. 3 had been complied with, even though there was no recital thereof on the face of the order. We should have expected that even though the appellants did not file an affidavit in support of their case on that aspect of the matter, the State would as a matter of precaution have filed an affidavit to indicate whether the conditions precedent set out in s. 3 had been complied with, considering that it was a general order which

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was being enacted under which a large number of adjournments must have taken place. The High Court has commented on this aspect of the matter and has said that the State Government did not file any affidavit in this connection to show that as a matter of fact the State Government was enabled as required by s. 3 even though there was no reveal of that consideration in the order itself. Taking into account, however, the importance of the matter, particularly as it must affect a large number of adjournments affecting a large number of employers and workmen, we asked the State Government if it desired to file an affidavit before us even at this stage. Thereupon the State Government filed an affidavit sworn by the Secretary to Government, Labour Department. The affidavit says that the drafts of G. O. no. 614 and the consequential order G. O. no. 671 passed on March 15, 1951, were put up before the then Labour Minister. The said notifications were issued only after all the aspects of the matter were fully considered by the State Government and it had decided it well that it was necessary and expedient to issue the same for the purpose of securing public convenience and maintenance of public order and supplies and services essential to the community and for the maintenance of employment. We accept this affidavit and it follows therefore that the satisfaction required as a condition precedent for the issue of an order under s. 3 of the Act was in fact there before the order no. 614 was passed on March 15, 1951, followed by the consequential order no. 671 of the same date. In view of this the only question that we have to consider is whether it is necessary that the satisfaction should be required in the order itself and whether in the absence of such record an order of this nature would be valid.

The first contention of *Sin Peh Kah*, who appears for one of the appellants, is that where a condition pre-



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Wheeler, J.

opinion was reached unless the contrary is established. He drew a distinction between those cases where the contrary precedent is the subjective opinion of the subordinate authorities and those where the same requires a hearing and a finding. In the former case he contends that the presumption should be in favor of the opinion having been formed before the order was passed though in the latter case it may be that the order should show that there was a hearing and a finding.

The power to pass an order under s. 3 when as usual as the necessary opinion required thereunder is formed. This opinion is naturally formed before the order is made. If therefore such an opinion was formed and an order was passed thereon, the subsequent order would be a valid exercise of the power conferred by the statute. The fact that in the notification which is made thereon to publish the order, the formation of the opinion is not recited will not take away the power to make the order which had already been tried led to the making of the order. The validity of the order therefore does not depend upon the record of the formation of the opinion in the order but upon the actual formation of the opinion and the making of the order in consequence. It would therefore follow that if by inadvertence or otherwise the record of the formation of the opinion is not mentioned in the preamble to the order the defect can be remedied by showing by other evidence in proceedings where challenge is made to the validity of the order, that as fact the order was made after such opinion had been formed and was thus a valid exercise of the power conferred by the law. The only exception to this course would be where the statute requires that there should be a recital in the order itself before it can be validly made.



There is no doubt that where a statute requires that certain delegated power may be exercised on fulfilment of certain conditions precedent, it is most desirable that the statute should be construed with a strict deeming that the condition had been fulfilled. But it has been held in a number of cases dealing with executive orders that even if there is some locus of this kind, the order does not become ab initio invalid and the defect can be made good by filing an affidavit later on to show that the condition precedent was satisfied. In *The State of Bombay v. Parasram Jag. Nank* (1), which was a case relating to preventive detention it was held by the Court that even if the order was defective in form it was open to the State Government to prove by other means that it was validly made. In *Buradhasan Nank v. The State of Orissa* (2) which was a case relating to detention under the Prevention of Corruption Act No. 11 of 1947, the Court held that "it is desirable to state the facts on the face of the warrant, because when the facts are not set out in the warrant, proof has to be given otherwise that warrant was given in respect of the facts constituting the offence charged; but an omission to set out the facts in the warrant is not fatal so long as the facts can be and are proved in some other way." In a later case in *The State of Bombay v. Ramji Akhoy* (3) which was a case of requisition under the Bombay Land Requisition Act, the Court held that it was not necessary to set out the purpose of the requisition in the order; the desirability of such a course was obvious because when it was not deemed good of the purpose must be given in other ways. But in itself an omission to set out the purpose in the order was not fatal so long as the facts were established to the satisfaction of the Court in some other way.

We are no difficulty in following this principle in the case of these orders also which are in the nature of sub-

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(1) (1960) 1 C. 102.  
(2) (1960) 1 C. 102.  
(3) (1960) 1 C. 102.

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Mason, J.

ordinate legislation. Whether orders are executive or in the nature of subordinate legislation their validity depends on certain conditions precedent being satisfied. If those conditions precedent are not satisfied on the face of the order and the fulfilment of the conditions precedent can be established to the satisfaction of the court in the case of executive orders we do not see why that cannot be made good in the same way in the case of orders in the nature of subordinate legislation. We cannot accept the extreme argument of *Sheri Appaiah* that the mere fact that the order has been passed is sufficient to raise the presumption that conditions precedent have been satisfied, even though there is no recital in the order to that effect. Such a presumption in our opinion can only be raised when there is a recital in the order to that effect. In the absence of such recital if the order is challenged on the ground that in fact there was no satisfaction, the authority passing the order will have to satisfy the Court by other means that the conditions precedent were satisfied before the order was passed. We are equally not impressed by *Sheri Periah* & *agars* that if the recital is not there, the public or officers and tribunals will not know that the order was validly passed and therefore it is not necessary that there must be a recital on the face of the order in such a case before it can be held to be legal. The presumption, as in the regularity of public acts would apply in such a case, but as soon as the order is challenged and it is stated that it was passed without the conditions precedent being satisfied the burden would be on the authority to satisfy by other means (in the absence of recital in the order itself) that the conditions precedent had been complied with. The difference between a case where a general order contains a recital on the face of it and one where it does not contain such a recital is that in the latter case the burden is thrown on the authority, making the order to satisfy

the Court by other means than the conditions precedent were fulfilled, but in the former case the Court will presume the regularity of the order (including the fulfillment of the conditions precedent, and then it will be for the party challenging the legality of the order to show that the record was not correct and that the conditions precedent were not in fact complied with by the authority [see the observations of STONE, C. J. in *King Emperor v. Sibnath Banerjee* (1) which were approved by the Privy Council in *King Emperor v. Sibnath Banerjee* (2)] Not are we impressed with the contention of Sir Patrick that conditions become a part of legislative process and therefore where they are not complied with the subordinate legislation is illegal and the defect cannot be cured by an affidavit here. It is true that such power may have to be exercised subject to certain conditions precedent but that does not assimilate the action of the subordinate executive authority to something like a legislative procedure, which must be followed before a bill becomes a law. Our condition, therefore, is that where certain conditions precedent have to be satisfied before a subordinate authority can pass an order (of a executive or of the character of subordinate legislation) it is not necessary that the satisfaction of those conditions must be recited in the order itself, unless the statute requires it, though, as we have already remarked, it is most desirable that it should be so, for in the case the presumption that the conditions were satisfied would immediately arise and burden would be thrown on the person challenging the fact of satisfaction to show that what is recited is not correct. But even where the recital is not there on the face of the order, the order will not become illegal ab initio and only a further burden is thrown on the authority passing the order to satisfy the court by other means that the con-

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(1) 1914 F. 40, 41, 42.

(2) 1914 F. 40, 41, 42, 43.

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divine precedent were complied with. In the present case this has been done by the King of an affidavit before me. We are therefore of opinion that the defect in the two orders of March 15, 1951, has been cured and it is clear that they were passed after the State Government was notified as required under s. 3 of the Act. These two Government Orders Nos. 145 and 171 of March 15, 1951, with which we are concerned in the present appeals are valid under s. 3 of the Act.

It remains to consider certain cases cited by Mr. Pathak in support of his contention. The first case to which reference may be made is *Western Fish Producers' Export Company v. Federal Fisheries Commission of the State of Kansas* (5). That was a case of a Commission which had to give a hearing and a finding that there were unreasonable before contract cases with a public utility company could be changed. After relying on s. 13 of the Act under consideration, the U. S. Supreme Court held that "a valid order of the Commission under the act must contain a finding of fact after hearing and so recognition, upon which the order is founded, and that for lack of such a finding, the order in this case was void." It rejected the argument that the lack of express finding might be supplied by implication and by reference to the averments of the petition involving the action of the Commission and rested its decision on the principle that an express finding of unreasonableness by the Commission was indispensable under the statute of the State. This case in our opinion is bound on the provision of the statute concerned which required such a finding to be made in the order and is no authority for the proposition that an express finding is necessary in the order in order that before a delegate can exercise the power delegated to it.

The next case is *Marbert Mahler v. Howard* (3). That was a case dealing with deportation of aliens. The statute provided for deportation of the Secretary (Labour) after hearing finds that such aliens were undesirable residents of United States. But the Secretary made no express finding as far as the warrant for deportation disclosed it. Nor was the defect in the warrant of deportation supplied before the Court. The Court held that the finding was made a condition precedent to deportation and it was essential that when an executive officer, using delegated legislative power he should substantially comply with all the necessary requirements in his exercise, and that, if his making a finding is a condition precedent to this act, the fulfilment of that condition should appear in the record of the act, and reliance was placed on the case of *Wicks Railroad and Light Company v. Public Utility Commission* (4). This again was a case of a hearing and a finding required by the statute to be stated in the order and must therefore be distinguished from a case of the nature before us. It may however be added that, the court did not discharge the deportees and give a reasonable time to the Secretary, Labour to correct and perfect his finding on the evidence produced at the original hearing or to initiate another proceeding against them.

The last case is *Pennine Refining Company v. A. D. Ryan* (5). In that case a 9-(c) of the National Industrial Recovery Act of 1933 was null struck down on the ground of excessive delegation, though it was further held that the executive order contained no finding and no statement of the grounds of the President's action in issuing the prohibition. This case in our opinion is not as good as far as the matter before us is concerned, for there the action itself was struck down and

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## SUPREME COURT

## APPELLATE CIVIL

*Before the Hon'ble Mr. Justice Das, the Hon'ble Mr. Justice Muktyesulish, the Hon'ble Mr. Justice Das Gupta, the Hon'ble Mr. Justice Shah and the Hon'ble Mr. Justice Ayyangar*

JAGANNATH PRASAD SHARMA (Appellant)

*vs.*  
State of U.P.

*vs.*

STATE OF UTTAR PRADESH and others

(Respondents)

[On appeal from the High Court at Allahabad]

*Dismissed from service of a Police Officer of subordinate rank by the Government—Whether complaint—Change of residence—*q.* corruption and gross dereliction of duty—Proceedings under Tribunal Rules—Whether discriminatory and void—Indian Police Act, 1919, s. 7—G. P. Regulations (subordinate Tribunal Rules, 1921, re 4(D) 2 and 3(D) 2 Police Regulations, Reg. 490—Constitution of India, arts. 14 and 220.*

*Held, (unanimously) that the power to dismiss, suspend or reduce a police officer of subordinate rank vested under s. 7 of the Police Act in the Inspector General of Police and other subordinate officers is not exclusive but subject, and in addition, to the prerogative in the Governor under which all civil servants (including under the present Constitution those in the Police Force) or a Junior hold duty office at the pleasure of the Governor, and act, in such, office in general or dismissal by him. There is, therefore, no substance in the plea that the Governor has no power to dismiss such officers from service.*

[For Majority, Sir Ganga, J. dissenting]—In respect of any of the charges (viz. immorality, corruption and gross dereliction of duty) enumerated in s. 4(B), a police officer could, in 1919, be provided against under either the G. P. Regulations Proceedings (Police) or under Tribunal Rules or the G. P. Police Regulations according to the choice of the authorities. The provisions laid down in the one or, however, substantially the same and, therefore, the consequences of an inquiry after the Constitution under the Tribunal Rules cannot be isolated in violation of Art. 14 of the Constitution. The fact that the order

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is made applicable whereas that of the Governor under the Tribunal Rules is not made applicable except for and to afford the guarantee of equal jurisdiction under no other law than that which exists with the Governor who has to decide the matter himself. Rule 10 of the Tribunal Rules as to how it is obliged the Governor to accept and pass the order of proceedings in cases recommended by the Tribunal may, in view of the absence of such obligation on the corresponding rule-making under the Police Regulations, be regarded as inconsistent with the Commission, but the actual intention of this rule does not being ascertainable, after the necessary rules.

(For *See* *Govt. J.*)—The Tribunal Rules in so far as they do not provide for any appeal against the decision of the Governor are in view of the right of appeal provided for under the Police Regulations amount to an unusual provision and not the direct result of that event. It is difficult to agree that the right of appeal is a right without substance. The company here means the violation of the provision and is really an attempt to shut away the difficulty.

*State of Orissa v. Chander Nath Das* (4) distinguished by the majority and applied by *Das* *Govt. J.*

Civil Appeal no. 120 of 1901, from the judgment and decree, dated the 22nd March 1894 of the Allahabad High Court in Civil Suit No. 7494 of 1892.

The facts appear in the judgment of *Basu, J.*  
*G. B. Pathak*, Senior Advocate (*M.* & *S. N. Astley, J. B. Dadachang, Ramchandra Nath and P. L. Pathak* Advocates, of *M.* & *Rajender Narain and Co.*, with him) for the appellants.

*C. B. Agarwala*, Senior Advocate (*G. C. Mackay and G. P. Lal*, Advocates, with him) for the Respondents nos. 1 and 2.

The following judgments of the Court were delivered by—

*Basu, J.*—In 1821, the appellant was admitted to the police force of the United Provinces and was appointed a Sub-Inspector of Police. He was later promoted to the rank of Inspector, and in 1848 was transferred to the Anticorruption Department. In 1847, he was appointed, while retaining his substantive rank of Inspector, to

[2] Civil Appeal no. 120 of 1901 transferred to the Supreme Court on 22nd August, 1901.



the offending rank of Deputy Superintendent of Police. Shortly thereafter, complaints were received by the Chief Minister and Inspector-General of Police, U. P., charging the appellant with immorality, corruption and gross dereliction of duty. In a preliminary confidential enquiry, the Inspector-General of Police came to the conclusion that "a prima facie case" was made out against the appellant. He then directed that a formal enquiry be held against the appellant and passed orders referring the appellant to his substantive rank of Inspector and placing him under suspension. An enquiry was held into the conduct of the appellant by the Superior Services of Police, Anti-corruption Department. The report of the Superintendent of Police was forwarded to the Government of U. P., and the Governor acting under r. 3 of the U. P. Public Discipline Proceedings (Administrative Tribunal) Rules, 1947—hereinafter called the Tribunal Rules—ordered the case for enquiry to a Tribunal appointed under r. 3 of the Tribunal Rules on charges of corruption, personal immorality and failure to discharge duties properly. The tribunal framed three charges against the appellant, and after a detailed survey of the evidence recommended on February 2, 1952, that the appellant be dismissed from service. The Governor then served a notice requiring the appellant to show cause why he should not be dismissed from service and after considering the explanations submitted by the appellant, the Governor ordered that the appellant be dismissed with effect from December 2, 1952. The appellant challenged this order by a petition instituted in the High Court of Judicature at Allahabad under Art. 226 of the Constitution for a writ of certiorari quashing the proceedings of the Tribunal and for a writ of mandamus directing the State of Uttar Pradesh to hold an enquiry under r. 33 of the Civil Service (Classification, Control and Appeal) Rules.

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In support of his appeal against the order of the High Court dismissing his petition, the appellant has stated three contentions:

(i) that the order dismissing the appellant from the police force was unauthorized, because the Government had no power under s. 7 of the Police Act and the regulations framed thereunder to pass that order;

(ii) that even if the Government was invested with power to dismiss a police officer, use of the suggestive mode of enquiry, a mode prejudicial to the appellant having been adopted, the proceedings of the Tribunal which enquired into the charges against him were void, as the equal protection clause of the Constitution was violated, and

(iii) that the proceedings of the Tribunal were void, because of patent irregularities which resulted in an erroneous decision as to the guilt of the appellant.

To appreciate the first two contentions, it is necessary briefly to set out the relevant provisions of the laws procedural and substantive in force, having a bearing on the tenure of service of members of the police force in the State of Uttar Pradesh.

The appellant was admitted to the police force organized under Act V of 1881. By s. 3 of that Act, superintendence throughout a general police district vests in and is exercised by the State Government in which such district is subordinate and except as authorized by the Act, no person, officer or court may be empowered by the State Government to supersede or control any police functionary. By s. 4, the ultimate control of the police throughout a general police district is vested in the Inspector-General of Police. By s. 7, it is provided that subject to the provisions of

Art. 311 of the Constitution and to such rules as the State Governments may from time to time make under the Act the Inspector-General, Deputy Inspector-General, Assistant Inspectors-General and District Superintendents of Police may at any time detain, suspend or reduce any police officer of the subordinate rank whom they shall think venial or negligent in the discharge of his duty, or unfit for the same, or may award any one or more of the punishments (set out therein) to any police officer of the subordinate rank who discharges his duty in a careless or negligent manner or who by any act of his own renders himself unfit for the discharge thereof.

Section 45, which (2) authorizes the State Government to make rules for giving effect to the provisions of the Act, and also to amend, add to or cancel the rules framed. The Government of Uttar Pradesh has framed rules called the Police Regulations under the Indian Police Act. Chapter 22 concerning regulations 377 to 387 deals with departmental punishments and criminal proceedings of police officers and Chapter 23 containing regulations 388 to 418 deals with appeals, remissions, pardons, etc. In regulation 377, it is provided that no officer appointed under s. 2 of the Police Act shall be punished by suspension or otherwise than in the manner provided in the chapter. Regulation 418 A provides that the punishment of dismissal or removal from the force or reduction in defined in regulation 418 may be awarded only after departmental proceedings. By regulation 421, cl. (4), "full power" is reserved to the Governor to punish all police officers, and by cl. (5), the Inspector-General is authorized to punish Inspectors and all police officers of "lower ranks." Regulation 419 provides for the departmental trials of police officers and regulation 420 provides that the departmental trials of police officers must be conducted

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in accordance with the rules set out therein. Regulation 496 as to the various classes makes provision as to oral and documentary evidence, framing of charges, explanation of the delinquent police officers, recording of statement of defence witnesses, recording of findings by the Superintendents of Police and the making of a report by the enquire officer if he is of the view that the delinquent police officer should be dismissed or removed from the force. Clause (g) provides that the police officer may not be represented by counsel in any proceedings now used against him under the rules. By regulation 497 every police officer against whom an order of dismissal or removal is passed is entitled to prefer an appeal against an order of dismissal from the police force or to the authorities prescribed in that behalf, but against the order of the Government an exercise of authority may not under regulation 497, if (4), an appeal is preferred.

By a 45-B of the Government of India Act, 1914, the service of all civil officers including police officers was at the pleasure of the Sovereign. In exercise of the power conferred by sub-s. (1) of a 45-B, classification rules were framed by the local governments. In the Government of India Act, 1919, Chapter 2 of Part X dealt with civil service, their status, recruitment and conditions of service. The section corresponding to a 45-B of the Government of India Act, 1914, in the latter Act was a 49(1) and thereafter all members of the civil service held office during the pleasure of the Sovereign. By the Government of India Act, 1935, to every civil servant a 34-fold protection was guaranteed by the (1) and (2) of a 49(1) that he shall not be dismissed from service by any authority antecedent to that by which he was appointed and that he shall not be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. But these provisions did not apply



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public service which continues to exist under the Union or a State shall continue in force so far as concerns such the Constitution. The power of the police institutions as to placing police officers is absolutely preserved.

On November 4, 1947, the Governor of U. P. in exercise of the powers conferred upon him by s. 7 of the Police Act, published the Tribunal Rules. By s. 1, d) (1), these rules apply "to all Government servants under the rule making control of the Governor" and are applicable to any acts, omissions or conduct arising before the date of commencement of the rules as they are applicable to those arising after that date. Cl. (1) of s. 1 defines "corruption", cl. (2) defines "failure to discharge duties properly" and cl. (3) defines "personal immorality". Rule 4 authorizes the Governor to refer to a Tribunal constituted under s. 3, cases relating to an individual Government servant or class of Government servants or servants in a particular area only in respect of matters involving (a) corruption, (b) failure to discharge duties properly, (c) immediate general inefficiency in a public servant of more than ten years' standing, and (d) personal immorality. By cl. (4), the Governor is also authorized in respect of a named Government servant on his own request to refer his case to the Tribunal in respect of matters referred to in sub-sec. (1). By s. 7, the proceedings of the Tribunal are to be conducted in camera and neither the prosecution nor the defense has the right to be represented by counsel. Rule 8 prescribes the procedure to be followed by the Tribunal and s. 9 deals with the record to be maintained by the Tribunal. Rule 10 states that the Governor shall not be bound to accept the Public Service Commission or the Tribunal's recommendations and shall pass an order of punishment in the terms recommended by the Tribunal, provided "the Governor sees fit for sufficient reasons, award a lesser punishment". Rule 11 pro-

vident that nothing in the rules shall be deemed to affect the conduct of disciplinary proceedings in cases other than those specifically covered by the provisions of the Tribunal Rules. Rule 13 authorizes the Governor to delegate the power to refer cases to gazetted officers in charge of districts and to pass an order of punishment under s. 74 to heads of departments.

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Inquiry against the appellant, though commenced before the Constitution was concluded after the Council session, and the order dismissing him from the police force was passed in December, 1922. Under Police Regulation 479 (4), the Governor had the power to dismiss a police officer. The Tribunal Rules were framed in exercise of various powers vested in the Governor including the power under s. 7 of the Police Act, and by these rules, the Governor was authorized to pass appropriate orders concerning police officers. In virtue of Art. 313, the Police Regulations as well as the Tribunal Rules in so far as they were not inconsistent with the provisions of the Constitution remained in operation after the Constitution. The authority vested in the Inspector-General of Police and his subordinates by s. 7 of the Police Act was not exclusive. It was controlled by the Government of India Act, 1925, and the Constitution which made the transfer of all civil servants of a Province during the pleasure of the Governor of that Province. The plea that the Governor had no power to dismiss the appellant from service and such power could only be exercised by the Inspector-General of Police and the officers named in s. 7 of the Police Act is therefore without substance.

But it is urged that the enquiry held by the Tribunal against the appellant and the order dismissing upon that enquiry deprived the appellant of the equal protection of the law and was therefore void as infringing Art. 14

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of the Constitution. It is true that when proceedings were started against the appellant for an enquiry for his alleged misconduct, one of two distinct procedures for holding an enquiry, was open for selection by the authorities. The police authorities could direct, as an enquiry under the Police Regulations under the procedure prescribed by regulation 430, it was also open to the Governor to direct an enquiry against the appellant, and as the charges against him fell within r. 4 of the Tribunal Rules, the procedure for enquiry was the one prescribed by r. 8 of the Tribunal Rules. Relying upon the existence of these two sets of rules simultaneously governing enquiries against police officers, either of which could be resorted to at the option of the authorities in respect of charges set out in r. 4 of the Tribunal Rules, it was urged that in directing an enquiry against the appellant under the Tribunal Rules, discrimination was practised against him, and he was deprived of the guarantee of equal protection of the law. That an enquiry against the appellant could have been made under the procedure prescribed by regulation 430 of the Police Regulations appears to be supported by rr. 5(1), 4 and 12 of the Tribunal Rules. Rule 1, sub-r. (5), provides that the Tribunal Rules shall apply to all Government servants under the rule-making control of the Governor, and by r. 4, the Governor is authorised to refer cases to the tribunal, but he is not obliged to do so. By r. 12, nothing in the Tribunal Rules is to affect the conduct of disciplinary proceedings in cases other than those specifically dealt with under the rules.

But the order of the Governor directing an enquiry against the appellant was passed before the Constitution and Art. 14 has no retrospective operation: it does not affect transactions even if patently discriminatory which were completed before the commencement of the Constitu-



vision. In *Syed Qasim Khan v. The State of Hyderabad* (1), this court was called upon to decide whether a trial of an offender commenced before the Commission under the Special Tribunal Regulations promulgated by the Military Governor of the Hyderabad State was, since the Commission, voided in view of Art. 14, *Muzumdar, J.* speaking for the majority of the court observed:

"... the effect of Article 14(1) of the Constitution is not to obstruct the action operation of the provisions law or to wipe them out altogether from the statute book; for so do so will be to give them retrospective effect which they do not possess. Such law must be held to be valid for all past transactions and for enforcing rights and liabilities accrued before the advent of the Constitution. On this principle, the order made by the Military Governor referring this case to the Special Tribunal cannot be impugned and consequently the Special Tribunal must be deemed to have taken cognizance of the case quite properly, and its proceedings up to the date of the coming in of the Commission would also have to be regarded as valid."

Similarly, *Das, J.* in *Lachmandas Krishnan Shree v. The State of Bombay* (2) in dealing with the validity of proceeding before the Special Judge holding a trial before the Commission observed:

"As the Act was valid in its entirety before the date of the Commission, that part of the proceedings before the Special Judge, which, up to that date had been regulated by this special procedure cannot be questioned, however discriminatory it may have been."

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The proceedings of the Tribunal prior to the commencement of the Constitution are, therefore, not open to challenge except to the limited extent indicated by *Maurice v. J.* The question which falls to be considered is whether the procedure followed by the Tribunal after the Constitution was discretionary and operated to the prejudice of the appellants.

Regulation 440 of the Police Regulations set out the procedure to be followed in an enquiry by the police commissioners, and rules 8 and 9 of the Tribunal Rules set out the procedure to be followed by the Tribunal. There is no substantial difference between the procedure prescribed for the two forms of enquiry. The enquiry in its true nature is quasi-judicial. It is much less than the very nature of the enquiry that the approach to the materials placed before the enquiring body should be judicial. It is true that by regulation 440, the oral evidence is to be direct, but even under rule 8 of the Tribunal Rules, the Tribunal is to be guided by rules of equity and natural justice and is not bound by formal rules of procedure relating to evidence. It was urged that whatever the Tribunal may admit as relevant evidence which is hearsay, the oral evidence under the Police Regulations must be direct evidence and hearsay is excluded. We do not think that any such distinction was intended. Even though the Tribunal is not bound by formal rules relating to procedure and evidence, it cannot rely on evidence which is purely hearsay, because to do so in an enquiry of this nature would be contrary to rules of equity and natural justice. The provisions for examining the witness and calling upon the delinquent public servant to submit his explanation are substantially the same under regulation 440 of the Police Regulations and rule 8 of the Tribunal Rules. It is urged that under the Tribunal Rules there is a departure in respect of

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important matters from the Police Regulations which render the Tribunal Rules inapplicable to the persons against whom enquiry is held under these rules. Finally, it is submitted that there is no right of appeal under the Tribunal Rules as is given under the Police Regulations; secondly, that the Governor is bound to act, according to the circumstances of the case, fairly and impartially, that under the Tribunal Rules none of the complexity of a case under enquiry provides opportunity of counsel to meet the person charged, enquiries by counsel are not permitted at the enquiry. These three variations, it is urged, make the Tribunal Rules not only discriminatory but prejudicial as well to the person against whom enquiry is held under these rules. In our view, this plea cannot be sustained. The Tribunal Rules and the Police Regulations as far as they deal with enquiries against police officers are promulgated under section 3 of the Police Act, and neither the Tribunal Rules nor the Police Regulations provide an appeal against an order of dismissal or reduction in rank which the Governor may pass. The fact that an order made by a police authority is made appealable whereas the order passed by the Governor is not made appealable is not a ground on which the validity of the Tribunal Rules can be challenged. In such case the final order rests with the Governor who has to decide the matter himself. Equal protection of the law does not preclude equal treatment of all persons without distinction. It merely guarantees the application of the same law alike and without discrimination to all persons similarly situated. The power of the Legislature to make a distinction between persons or matters upon basis as a real difference is not taken away by the equal protection clause. Therefore by providing a right of appeal against the order of police authorities acting under the Police Regulations imposing punishment on a member of the police force and by providing

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on each night of appeal when the order is passed by the Governor, no discrimination against the applicants of Article 14 is practised.

Under rule 10 of the Tribunal Rules, the Governor is required to give an order of punishment in cases recommended by the Tribunal, whereas no such obligation is cast upon the police officers who are competent to dismiss a police officer when an enquiry is held under regulation 300 of the Police Regulations. To the extent that rule 10 requires the Governor to accept the recommendation of the Tribunal, the rule may be regarded as inconsistent with the Constitution because every police officer holds office during the pleasure of the Governor, and is created under Article 31(1) as a reasonable opportunity to show cause to the satisfaction of the Governor against the action proposed to be taken in regard to him. The partial invalidity of rule 10 however does not affect the remaining rules that part of the rule which requires the Governor to accept the recommendation of the Tribunal as to the guilt of the public servants concerned is clearly valid. We may observe that in considering the case of the applicant, the Governor exercised his independent judgment and passed an order of dismissal and did not merely accept the recommendation of the Tribunal. The difference between the two sets of rules on the matter under consideration does not relate to the procedure of the enquiring bodies, but to the content of reasonable opportunity guaranteed by Article 31 of the Constitution.

The rules relating to appointment of officers as inspectors under the Police Regulations and under the Tribunal Rules also show differences. Section 100(1) of regulation 300 of the Police Regulations, an accused police officer may not be represented by counsel in any proceedings conducted under those regulations and by rule 7 of the Tribunal Rules, neither the prosecution

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are the defense have the right to be represented by counsel. Both the rules deny to the police officer the right to be represented by counsel.

The procedure provided in the Police Regulations is substantially the same as the procedure provided by the Tribunal Rules, and by consulting the original, after the Constitution under the Tribunal Rules and now under the Police Regulations, a more correct procedure is referred to the procedure that was adopted.

The Governor supported the petition for enquiry against the appellants before the Commission, but the order of dismissal was passed after the Constitution came into force. The appellants were entitled to the protection of Article 31(a) of the Constitution. Since the Commission was created, the distinction which was made between members of the police force and other civil servants under sections 240, 241 and 242 of the Government of India Act has disappeared and all civil servants including the police officers are entitled to the protection of Article 31(a). The content of the guarantee was explained by this court in *Kilmer Chand v. The Union of India* (1). It was observed by Chief Justice Das at p. 2002:

<sup>10</sup> To summarize: the reasonable opportunity is shaped by the provision under consideration.

(4) an opportunity to deny his guilt, and establish his innocence which he can only do if he is told what the charges levelled against him are and the allegations on which each charge is based.

(4) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defense, and

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discrimination was not proved. It was observed (at p. 281) :

"Does the holding of an enquiry against a public servant under the Public Servants (Inquiries) Act, 1850, violate the equal protection clause of the Constitution? The appellant submits that the Government is invested with authority to direct an enquiry as one of its alternative modes and in directing an enquiry under the Public Servants (Inquiries) Act which Act it is submitted contains more stringent provisions than against another public servant similarly circumstanced an enquiry under rule 33 may be directed, Article 14 of the Constitution is violated."

Was considering the special procedure given to members of the Indian Civil Service and the essential characteristics of the procedure for making enquiries under the Public Servants (Inquiries) Act, 1850 it was observed at p. 284 :

"The primary constitutional guarantee, a member of the Indian Civil Service is entitled to, is one of being afforded a reasonable opportunity of the nature set out earlier, in an enquiry in respect of points covered by either the Public Servants (Inquiries) Act or rule 33 of the Civil Services (Classification, Control and Appeal) Rules, and discrimination is not proved, merely because now it had to one of two alternative means of enquiry, unless it is shown that the procedure adopted operated to the prejudice of the public servant concerned. In the case before us, the enquiry held against the appellant is not in manner different from the manner in which an enquiry may be held consistently with the procedure prescribed in rule 33, and therefore on a plea of inequality before the law the enquiry held by the



Enquiry Commission is not liable to be declared void because it was held in a manner though permissible in law, not in the manner the appellants say, it might have been held."

In *Syed Ghulam Durr's case* (3), it was held that if the substance of the special procedure followed after the Constitution is an enquiry or trial commenced before the Constitution is the same as in the case of a trial by the normal procedure, the plea of discrimination (in violating a trial) must fail.

Caused by the appellants to support of his plea that the enquiry by the Tribunal was vitiated because it was held under a discriminatory procedure relied upon a judgment of the Bench in the case of *Quresh v. Dharmadharb Das* (2). In that case, a lower Division Assistant in the Secretariat of the Orissa Government was found guilty of serious misconduct by a Tribunal appointed under rules framed by the Orissa Government after an enquiry held in that behalf and was ordered to be dismissed from service. In a petition by the public servant under Article 226 of the Constitution, praying for a writ declaring illegal the order of dismissal it was held by the Orissa High Court that on the date on which enquiry was directed against the petitioner—there was two sets of rules in operation, the Tribunal Rules and the Orissa and Orissa Subordinate Services, Discipline and Appeal Rules—and it was open to the Government of Orissa to select either set of rules for enquiry against the public servant against whom a charge of misconduct was made and that selection of one in preference to the other set of rules, was within the discretion of Article 14 of the Constitution. The High Court accordingly declared the order of dismissal responsive and further declared that

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the disciplinary proceedings be restored to the stage which they had reached when the case was referred to the tribunal. Against the order, the Senate of Ottawa preferred an appeal to this Court. The relevant rules were not in that case incorporated in the paper-book prepared for the hearing and did counsel for the Senate produce for our consideration these rules. Counsel also contended that by the adoption of the procedure prescribed by the Tribunal Rules in preference to the procedure in an enquiry under the Service Rules, discrimination would be practiced because there were substantial differences in the protection in which the public servants were entitled under the Service Rules and the Tribunal Rules. The only ground pressed in support of the appeal was that the Service Rules were not in operation at the time when the enquiry in question was directed and by directing an enquiry under the Tribunal Rules, discrimination was not practiced. But this argument failed for the first time questions which were never investigated and this Court declined to allow Counsel to raise them. It was shown in this case:

"If the two sets of rules were in operation at the material time when the enquiry was directed against the respondent and by order of the Governor, the enquiry was directed under the Tribunal Rules which are 'more drastic' and prejudicial to the interests of the respondent, a clear case of discrimination arises and the order directing enquiry against the respondent and the subsequent proceedings are liable to be struck down as infringing Article 14 of the Constitution."

Before us, counsel for the appellants has produced a printed copy of the Disciplinary Proceedings (Admiralty Service Tribunal) Rules, 1932, published by the Government of Ottawa. A perusal of these rules may appa-

rely, suggest that subject to certain minor differences, these rules are substantially the same as the 'Disciplinary Rules' framed by the State of U. P. We have, however, not been supplied with a copy of the Bihar and Orissa School and Teachers Discipline and Appeal Rules, 1921. The judgment of this Court in *The State of Orissa v. Dinendranath Das* (1) can have no application to this case, because in that case, the order of the High Court was issued on the limited ground that the High Court erred in assuming that there were two sets of rules simultaneously in operation, and it was open to the Executive Government to select one or the other for holding an enquiry against a delinquent public servant. This contention was rejected and the judgment of the High Court was confirmed.

We do not think that there is any substance in the plea that discrimination was prevented by comparing the papers under the Tribunal Rules after the Commission was formed in 1990.

This appeal is filed with a certificate under Article 191 of the Constitution. By clause (2) of Article 191, the appellant is entitled to appeal to this court only on the ground that the High Court has wrongly decided a substantial question as to the interpretation of the Constitution and unless this court grants leave to him, on no other ground. Counsel for the appellant has challenged the regularity of the proceedings of the tribunal and we have heard him on more matters than the proceedings of the tribunal has now been venated by any serious irregularity, or that the appellant was not deprived of the protection under Article 311 of the Constitution. We proceed to consider briefly the arguments advanced in support of this plea. It was urged in the first instance that the appellant was not permitted to appear in the matter before the tribunal, a letter wherein

For David Heston, the use of standardized on-site human cells



pages five the application submitted by the applicant for summoning witnesses and calling for certain records was not considered and the applicant had on the witness been prejudiced. In paragraph 13 of his affidavit, the applicant stated that the tribunal refused to call his private records and though he wanted to examine certain defense witnesses, his application in that behalf was also refused. In answer to this statement, Hon. Charles Sharma stated that the applicant had given a long list of defense witnesses and the tribunal asked him to select those witnesses whose evidence in the opinion of the applicant would be relevant and thereupon the applicant "refused his list to a much smaller number" and all those witnesses were summoned. Then it was stated that the manner in which required under the rules to state the affidavits not having remained present in the hearing the entry was refused. In paragraph 16 of the affidavit, the applicant has stated that during the evening 5-78 Agha the witness was absent on many days on which the case was heard and the evidence was recorded. In reply, Hon. Charles Sharma stated that the contents of paragraph 16 of the affidavit were not correct, that it was true that Agha could not attend on certain days "due to unavoidable circumstances", but the applicant was specifically asked if he had any objection to the recording of evidence in Agha's absence and the applicant having stated that he has no objection, the proceedings were continued with his written consent. He further stated that the manner was explained the proceedings held on the days on which he had remained absent. The statements made in the affidavit, at Hon. Charles Sharma were not controverted by the applicant.

On the materials placed on record, there is no substance to any of the pleas raised by the applicant relating to the irregularities of the proceedings of the tribunal.

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It may be pointed out here that even though the appeal was challenged before the High Court the regularity of the proceedings of the tribunal, an argument was in support, advanced before the High Court in support thereof. The judgment of the High Court which is fairly detailed does not refer to any ground on which the conviction was sought to be sustained.

The appeal fails and is dismissed with costs.

THE COURT, J.:—I have had the advantage of reading the judgment prepared by my brother Mr. Justice Sully, but while I respectfully agree with the conclusions on all other points, I regret my inability to agree with the conclusion reached there on the main question in controversy, viz., whether the Civil Service Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, are void as being in contravention of Article 14 of the Constitution, in so far as they do not provide for any appeal against a decision by the Governor under rule 14.

The facts have been fully stated by my learned brother and need not be repeated, especially as the issue in this particular case does not arise for consideration as the decision of the question of law, whether Article 14 is contravened by the above provisions of the Tribunal Rules. Under these rules the Governor may refer to the tribunal constituted in accordance with rule 3 "cases relating to an individual government servant or class of government servants or government servants in a particular area only in respect of matters involving—(a) corruption; (b) failure to discharge duties properly; (c) irretrievable general inefficiency in a public servant of more than one year's standing; and (d) personal immorality". Under clause 3 of rule 1 these rules apply to all government servants under the rule making control of the Governor. It is not disputed that these rules apply to every member of the police service

in the Police and that the Governor may order to be referred the cases relating to any individual government servant belonging to the police department in respect of any of the matters mentioned in clause (ii) of rule 4. It is also not disputed that if the Governor does not make any such reference, the case of any such member of the police service in respect of any of these matters, may be required to be under the Uttar Pradesh Police Regulations. The substance of the provisions of Police Regulations on the question of departmental punishment of police officers with the Tribunal Rules is as follows:—the position that of two members of the police service holding the same post and rank, one may be proceeded against in respect of any of the matters mentioned in rule 4(i) of the Tribunal Rules, under the Tribunal Rules and another may be proceeded against by the same authority under the Police Regulations. Where the matter is held under the Tribunal Rules the Tribunal has to make a record of the charges the explanation or any findings and the terms of the sentence and where satisfied that punishment be imposed, the Tribunal may recommendations about punishment. Under rule 10 the Governor will then decide the case and no appeal shall lie against the order so passed by the Governor. Where the action is taken under the Police Regulations procedure, a police officer against whom an order of dismissal, removal, suspension or reduction is passed has a right of appeal to the authority prescribed in regulation 100. The question is whether the existence of the right of appeal under the Police Regulations procedure and the absence of the right of appeal against the decision by the Governor in the Tribunal Rules procedure amounts to unequal treatment. On behalf of the respondents it has been urged that there is no unequal treatment as in one case it is the order of the Governor which is made non-appealable and in the other case

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is in the order of a police functionary which is made appealable. The argument seems to be that only if in the Police Regulations an order made by the Governor had been made appealable while under the Tribunal Rules the order made by the Governor was not appealable, there could be any scope for a complaint of unequal treatment. With great respect to the learned justices who have taken the contrary view, I am of the opinion that this argument states the position of the persons and it really is attempts to shut out the defendant. The real position that requires examination now appears to me to be this. Suppose A and B are two police officers holding the same rank and pay, and A is proceeded against under the Tribunal Rules on a charge of corruption while B is proceeded against on a similar charge of corruption under the Police Regulations provisions. In the first case if the tribunal finds A guilty and recommends, say, dismissal, and the Governor makes an order of dismissal, against the order there is no appeal. Suppose in B's case that the presiding authority makes an order of dismissal but against that B has a right of appeal. It is obvious that while in the latter case B has some chance of the appeal, his authority taking a different view, either about his guilt or about the quantum of punishment and setting aside or modifying the order, A has no such chance at all. It will be fairly concluded as to A that the order in his case has been passed by such an high authority as the Governor. He can, it seems to me, legitimately complain that there is a real difference between the way he is treated and B is treated because of this existence of B's right of appeal against the presiding authority's order while he has no such right. Unless one assumes that the right of appeal is *only* in name, I do not see how one can deny that there is a legitimate basis for this complaint. I cannot agree that the right of appeal is a right without substance. Whenever one



authority etc. on appeal over another authority there is always a chance that the appellate authority may take a different view of facts or of law and so regard the quantum of punishment required, from the authority whose decision is under appeal. It is this chance which is denied, if a right of appeal is taken away. I am therefore of opinion that the absence of the right of appeal under rule 16 of the Tribunal Rules while a right of appeal is given to a police officer under the Police Regulations results in unequal treatment in a substantial matter, as between a police officer proceeded against under the Tribunal Rules and an officer who is proceeded against under the Police Regulations procedure. Nor is it possible to discover any principle to guide the discretion of the Government to select some police officers to be proceeded against under the Tribunal Rules while leaving one other police officer to be proceeded against, in respect of similar matters, under the Police Regulations procedure.

I have, therefore, come to the conclusion that the Tribunal Rules in so far as they provide that no appeal shall lie against the decision of the Governor in office under the Constitution, being in contravention of Article 14 of the Constitution.

As has been remarked by my Brother Mr. Justice Sanku a similar question had to be considered by us in Civil Appeal No. 105 of 1955 (*State of Orissa v. Dharamnath Das*). Comparing the Disciplinary Proceedings (Administrative Tribunal) Rules, 1951, of the Orissa Government under which Dharamnath Das had been proceeded against and dismissed from service with the Bihar and Orissa Subordinate Service Discipline and Appeal Rules, 1953, this Court held that inasmuch as there was a right of appeal to the authority immediately superior to the punishing authority under the Service Rules while there is no

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## SUPREME COURT

## APPELLATE CIVIL.

*Before the Hon'ble Mr. Justice Gopabandhu, the Hon'ble Mr. Justice Jeejeebhoy, the Hon'ble Mr. Justice Macpherson, the Hon'ble Mr. Justice Das Gupta and the Hon'ble Mr. Justice Appender.*

**LALASH CHANDRA (APPELLANT)**

**v.**

**THE UNION OF INDIA (RESPONDENT)**

**THE UNION OF INDIA (RESPONDENT)**

**[ON APPEAL FROM THE HIGH COURT OF MADRAS]**

**Relief.** *Miscellaneous benefits existing either on or after the 1st of April or those in respect from being that date but which are then lost on a permanent post etc. etc.*—*Whether entitled to maintain a writ or the writs app.—* *Classification of these is a special service existing before the year 1947 and those existing before and those existing after September 1, 1947 with a provision for those cases before and afterwards against retained members in the list.—* *Whether entitled to—* *Indian Railway Establishment Code, R. 1947 (1947)—* *Classification of India, 1947, Art. 19.*

The correct interpretation of rule 1947(1) of the Indian Railway Establishment Code is that a railway establishment cannot be treated as a unit for the purpose of the year 1947 and be entitled to, and may be entitled to, such benefits, however, may be in the discretion of the appropriate authority and cannot be claimed as of right by a service even though his efficiency is undoubted.

The classification of railway establishments existing before the 1st of April 1947 and the year 1947 existing up to the year existing after September 1, 1947, with a provision for those cases before and afterwards against retained members in the list (Category) does a classification and permanent and is not, therefore, for the purpose of equal provision under the Constitution.

*Agarwal V. Union Minister of State of India (1) Indian Railways General Manager, Northern Railway (2) and State of India (3) Chief Minister, Government of India (4) approved.*

*Civil Appeal No. 185 of 1948, from the judgment and decree dated the 10th November, 1948, of the*

CO-113, 1948 All. 100. (1) 113, 1948 P.W. 100.  
CO-113, 1948 All. 100. (1) 113, 1948 P.W. 100.



plaintiff has preferred the process appeal on a court basis granted by the High Court under Article 139(1) of the Constitution.

The main question therefore is whether on a proper interpretation of rule 508(1)(a) of the Railways Establishment Code, which is identical with the fundamental rule 58 (3) (i), the plaintiff had the right to be retained in service till the age of 50 years. It is necessary to mention that the plaintiff's case that he continued to be efficient even after attaining the age of 45 years has not been disputed by the respondent, the Union of India. Consequently the question is: Assuming the plaintiff to be continued to be efficient whether he had the right to be retained in service till he attained the age of 50 years? Rule 508 (1) of the Code deals with the question of retirement of railway servants other than ministerial and provides that such railway servant, that is, one who is not a ministerial servant, will be compulsory retired on attaining the age of 55 years but may be retained in service after that date "with the sanction of the competent authority on public grounds" which must be recorded in writing. A further provision is made that he must not be retained after the age of 60 years except in very special circumstances. Rule 508(a) deals with cases of ministerial servants. It has two clauses of which clause (b) deals with (b) ministerial servants who entered Government service on or after April 1, 1948, or (c) who though in Government service on March 31, 1948, did not hold a lien or a suspended lien on a permanent post on that date. These also, like the railway servants, who are not ministerial servants, have to retire ordinarily at the age of 55 years and cannot be retained after that age except on public grounds as he recorded in writing and with the sanction of the competent authority and must not be retained after attaining the age of 60 years except in very special circumstances.

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Clause (4) deals with railway ministerial servants other than those who entered Government service on or after April 1, 1958 or those in Government service on March 31, 1958, who did not hold a lien or a suspended lien on a permanent post on that date. The exact words of the rule are:

"A ministerial servant who is not governed by sub-clause (3) may be required to retire at the age of 55 years but should ordinarily be retained in service if he continues to be efficient up to the age of 60 years. He must not be retained after the age except in very special circumstances which must be recorded in writing and with the sanction of the competent authority."

It is obvious that the rule in regard to compulsory retirement is more favourable to ministerial servants who fall within clause (4) of rule 1941/s than those who fall under clause (3) of the same rule or railway servants who are not ministerial servants. For whereas in the case of these, viz., railway servants—who are not ministerial servants, and ministerial servants under clause (3) retirement after the age of 55 itself is intended to be compulsory—to be made on public grounds which must be recorded in writing and with the sanction of the competent authority, in the case of ministerial servants who fall under clause (4) of rule 1941/s their retirement after the age of 60 is treated as compulsory and to be made in a similar manner as a sanction in the case of the other railway servants mentioned above after the age of 55. It is clear therefore that whereas the authority apprehends to make the order of compulsory retirement or of retention is given, so discretion lies itself to retain a ministerial railway servant under clause (4) if he attains the age of 55 years, that is not the position in regard to the ministerial servants who fall under clause (3). The appellant's

connection between goes very much further. He now reads that, in the case of ministerial servants who come within clause (a) and after attaining the age of 35 years continue to be efficient it is not even a case of surrender of the appropriate authority to retain him or not, but that such ministerial servants have got a right to be retained and the appropriate authority is bound to retain him, if efficient.

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The first clause of the first sentence of the relevant rule taken by itself certainly gives the appropriate authority the right to require a ministerial servant to retire, as soon as he attains the age of 35 years. The question is: "Whether this right is cut down by the second clause, viz., but should ordinarily be retained as long as he continues to be efficient up to the age of 40 years". On behalf of the appellants it is urged that the very use of the conjunction "but" is for the definite purpose of the cutting down of the right conferred by the first clause, and that the effect of the second clause is that the right to require the Government servant to retire at 35 is limited only to cases where he does not retain his efficiency; but where he does retain his efficiency the right to retire him is only when he attains the age of 40 years. We are constrained to say that the language used in this rule is unambiguously involved, but at the same time it is reasonably clear that the defect in the language creates no doubt as regards the intention of the rule-making authority. The intention in our opinion, is that the right conferred by the first part is not in any way limited or cut down by the second part of the sentence; but the defendant has thought fit by inserting the second clause to give to the appropriate authority an option to retain the servant for four years more, subject to the condition that he continues to be efficient. If this condition is not satisfied the appropriate authority has no option to

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release the servant, where however the condition is qualified the appropriate authority has the option to do so but is not bound to exercise the option. If the intention had been to cut down the right conferred on the authority to retire a servant at the age of 35 years the proper language to express such intention would have been,

"... may be required to retire at the age of 35 years provided however that he shall be retained in service if he continues to be efficient up to the age of 60 years" or some such similar words. The use of "should ordinarily be retained in service" is sufficient index to the mind of the rule-making authority that the right conferred by the first class of the sentence remained. Leaving out for the present the word "ordinarily" the rule would read thus:

"A masterd servant who is not governed by sub-clause (b) may be required to retire at the age of 35 years but should be retained in service if he continues to be efficient up to the age of 60 years." Reading these words without the word "ordinarily" we find it unaccountably to think that it indicates any intention to cut down at all the right to require the servant to retire at the age of 35 years as to exercise in the servant any right to continue beyond the age of 35 years if he continues to be efficient. They are much more apt to express the intention that as soon as the age of 35 years is reached the appropriate authority has the right to require the servant to retire but that between the age of 35 and 60 the appropriate authority is given the option to release the servant but is not bound to do so.

This intention is made even more clear and beyond doubt by the use of the word "ordinarily". "Ordinarily" means "in the large majority of cases but not invariably". This itself emphasises the fact that the



appropriate authority is not bound to retain the servant after he reaches the age of 21, even if he continues to be efficient. The exception of the second clause therefore clearly is that while under the first clause the appropriate authority has the right to retain the servant who falls within clause (a) as soon as he attains the age of 21, as well, at that stage, consider whether or not to retain him further. This option to retain for the further period of five years can only be exercised if the servant continues to be efficient; but in deciding whether or not to exercise this option the authority has to consider circumstances other than the question of efficiency also, is the absence of special circumstances he "should" retain the servant; but what are special circumstances is left entirely to the authority's decision. Thus after the age of 21 is reached by the servant, the authority has to exercise its discretion whether or not to retain the servant; and there is no right in the servant to be retained, even if he continues to be efficient.

Kabane was joined by learned counsel as an observer of *Winstanley*, [as he then was, in *Ju. Socy v. Union of India* (1)] when speaking for the court as regards this rule his Lordship said:

"We think it is a possible view to take upon the language of this rule that a contractual servant coming within the purview has normally the right to be retained in service till he reaches the age of 21. This is confirmed undoubtedly upon his continuing to be efficient. We may assume therefore for purposes of this case that the plaintiff had the right to continue in service till 21 and could not be retired before that stage on the ground of inefficiency."

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It would be wholly unreasonable however to consider this as a dispute on the question of what the rule means. Nothing said is important that as the plaintiff under this rule has the right to continue in service till 60 and could not be retired before that except on the ground of inefficiency certain results follow, the court assumed for the sake of argument that this was possible and proceeded to deal with the learned counsel's arguments on this head. It was not intended to say that this was the correct interpretation that should be put on the words of the rule.

The correct interpretation of rule 148(b) (c) of the Code, in our opinion, is that a railway managerial servant falling within this clause may be compulsorily retired on attaining the age of 55 but when the servant is between the age of 55 and 60 the appropriate authority has the option to continue him in service, subject to the condition that the servant continues to be efficient but the authority is not bound to retire him even if a servant continues to be efficient.

It may be mentioned that this interpretation of the rule has been adopted by several High Courts in India (*Ramesh Kumar Pal v. The Chief Secretary, Enigma* (3), *Ramesh Doyal v. General Manager, Northern Railway* (2) and *Rajeshwar Nath Mathur v. Union of India* (4)).

We, therefore, hold that the High Court was right in holding that this rule gave the plaintiff an right to continue in service beyond the age of 55.

It was next urged by Mr. Aggarwal, though fairly, that the notification of the Railway Board, dated October 19, 1948, and the further notification, dated April 19, 1952, as a result of which managerial servants who were retired under rule 148(a)(i) before attaining the

(1) AIR, Calcutta 1952, 100. (2) AIR, Madras 1952, 100. (3) AIR, Calcutta 1952, 100. (4) AIR, Calcutta 1952, 100.

age of 60 after September 8, 1948, have been given special treatment are discriminatory. It appears that on September 8, 1948, the Government of India came to a decision that no ministerial Government servant to whom the fundamental rule 54(3)(c) applied and who has attained the age of 55 years but has not attained the age of 60 years would be required to retire from service unless he has been given a reasonable opportunity to show cause against the proposed retirement and unless any representation that he may desire to make in this connection has been duly considered. This decision was communicated to different departments of the Government of India and it was directed that this should be noted "for future guidance". On October 19, 1948, the Ministry of Railways issued a notification for dealing with cases of retirement of ministerial servants governed by rule 204(3)(c) [which corresponded to fundamental rule 54(3)(c)] in the manner as directed by the Government of India's notification, dated September 8, 1948. This notification of October 19, 1948, again made it clear that it had been decided not to take any action in respect of ministerial servants who had already been retired. Again, in a notification dated April 19, 1950, the Railways Board communicated a decision that "each of the ministerial servants who had been retired after 8th September 1948, but before attaining the age of 60 years without complying with Article 311 (2) of the Constitution should be taken back to duty" under certain conditions.

The appellant's contention is that the denial of this advantage given to other ministerial servants falling within rule 204(3)(c) who had been retired after September 8, 1948, is unconstitutional. We do not find that this contention has any substance. What happened was that on September 8, 1948, the Govern-

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would make a decision that constitutional services should not be raised under the rule in question on attainment of 35 years of age if they were directed without giving them an opportunity of showing cause against the action and accordingly from that date it changed its procedure in regards the question of the option to raise causes between the age of 35 and 40. The decision that nothing should be done in regards those who had already retired on that date cannot be said to have been arbitrarily made. The formation of a different class of those who retired after September 8, 1948 from those who had retired before that date on which the decision was taken is a reasonable classification and does not offend Article 14 of the Constitution. This contention is therefore, also rejected.

The High Court was therefore right, in our opinion, in holding that there was a reasonable classification of the constitutional services who had been raised under rule 204B (2) (a) on attaining the age of 35 into two classes - one class consisting of those who had been raised after September 8, 1948, and the other consisting of those who retired up to September 8, 1948. There is, therefore, no denial of equal protection of law guaranteed by Article 14 of the Constitution.

In the result, the appeal fails and is dismissed. There will be no order as to costs, the applicant is a pauper. We make no order under Order XIV, rule 3 of the Supreme Court Rules.

*Appeal dismissed*

## SUPREME COURT

## APPELLATE CIVIL

Before the Hon'ble Mr. Justice Gopabandopadhyay, the  
Hon'ble Mr. Justice Sarkar, the Hon'ble Mr. Justice  
Jagab Rao, the Hon'ble Mr. Justice Manohar  
and the Hon'ble Mr. Justice Mudholkar.

STATE OF UTTAR PRADESH and others

(Appellants)

v.

ADODHYA PRASAD (Respondent)

1971  
1972  
1973

[ON APPEAL FROM THE HIGH COURT AT ALLAHABAD]

*Police Act, 1948* s. 30—Removal of a Police Officer, Police Regulation  
Act, 1948, s. 44 and 45—Constitution—Departmental  
trial, provided by, Magistrate's inquiry—Effect of—Para 44  
of the Police Regulations, whether applicable to the case.

Where a police officer was charged with sentences in the dis-  
charge of duty and of dishonesty, dereliction and misbehaviour  
and he was transferred from one station to another after a  
magisterial inquiry and thereafter dismissed by the Superinten-  
dent of Police after a trial under section 3 of the Police Act,  
he filed a writ petition before the High Court which quashed  
the order of dismissal on the ground that the police officer had  
not been charged with commission of cognisable offence, para  
44(a) of the Police Regulations governed the situation, and no  
act as required by para 44(b) having been registered against  
the police officer in the police station, the order of dismissal  
was void.

On an appeal by the State by special leave to the Supreme  
Court on the ground that a magisterial inquiry having been  
held in regard to practically all the charges, the Superintendent  
of the Department, and the case was not covered by the para 44  
of the Police Regulations.

Held, that the departmental inquiry was only a further step  
in respect of the misconduct of the respondent in regard where-  
in the magisterial inquiry was held in an earlier stage.

A continued reading of the provisions of para 44 and 45 of  
the Police Regulations indicate that para 44 does not apply  
to a case where a magisterial inquiry is ordered and a police  
officer is

1. *Journal of the American Medical Association*, 1997; 277: 1001-1005.

willow can be departmentally used under s. 3 of the Policy to allow such commercial growth

The departmental trial having been held subsequent to the completion of the registered enquiry, the new bill within the scope of para 10(2) and the trial was consequently void.

The appeal was accordingly allowed and the case remanded to the District Court for disposal according to law.

The data of L. F. = 1000 days (Figure 11) referred as

Civil Appeal no. 170 of 1899, from the judgment and order, dated the 17th December, 1895, of the Allahabad High Court (Lucknow Bench), Lucknow in Civil Appeal no. 170 of 1899.

**The team worked in the laboratory**

G. B. Agrawal, Senior Advisor, G. C. Mehta and  
C. P. Lal, Advisors with him, for the operations

Arthur Rapp, Senior Advocate; J. K. Stanley, Counsel  
for Nash, J. B. DeLoach, and P. L. Felt, Advocate  
of Messrs. R. W. & Co. with him, for the respondents.

Offenhausen, Sommer, Blum und Mergenshausen 111

**SIRHAN KAT, J.**—There is an appeal by special leave against the judgment and order of the High Court of Judicature at Alibabud, Ludhiana Bench, allowing the petition filed by the respondents under Article 113 of the Constitution.

The firm are in a small company and may be locally owned. In the year 1933, the respondent was appointed a constable in U. P. Police Force, on 1st December, 1933, he was promoted to the rank of head constable and in Mar, 1934, he was posted as officer in-charge of Police Station Bahadurganj, District, Gorakhpur. Complaints were received by the District Magistrate, Gorakhpur, in the effect that the respondent was receiving bribes in the discharge of his duties. On 18th September 1935 the District Magistrate, Gorakhpur, directed the Sub-Divisional

Magistrate to make an enquiry in respect of the said complaints. On 2nd November, 1932, the Sub-Division of Magistrate, after making the necessary enquiries, submitted a report to the District Magistrate recommending the transfer of the respondent to some other station. On 15th November, 1932, the District Magistrate sent an endorsement to the Superintendent of Police to the effect that the Sub-Divisional Magistrate had found substantial complaints against the integrity of the respondent. That he had also received such complaints and that his general reputation for integrity was not good. That his transfer should, however, come after sometime and that in the meantime his work might be closely watched. On being called upon by the Superintendent of Police to submit an explanation for his conduct, the respondent submitted his explanation on 29th November, 1932. On 15th December, 1932, the respondent was forced to go on leave for two months. Before the expiry of his leave, he was reverted to his substantive post of head constable and transferred to Jaipur. On 15th February, 1933, he was promoted to the rank of officiating Sub-Inspector and posted as Station Officer at Sialkote. On 17th February, 1933, the Superintendent of Police made the following endorsement in his character roll:

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1935

'A strong officer with plenty of push in him and not with a strong opposition in the new charge. Chinese control was very good but complaints of misappropriation were received which could not be substantiated. Integrity verified.'

Notwithstanding no further complaints, the C.I.D. picked the matter further and on 26th July, 1933, the Superintendent of Police, Investigation Branch, C.I.D., reported that the respondent was a habitual bribe-taker. On 28th July, 1933, he was placed under suspension and

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on 21st August, 1953, he was charged under section 3 of the Police Act with conspiracy in the discharge of his duty and sentence for the same immediately as while posted in a Station Officer, Police Station Intanabok, he had been guilty of dishonesty, corruption and misbehaviour in that he had on nine occasions, particulars of which were given in the charge, accepted bribes. It may be mentioned that the magisterial enquiry related to seven of the nine charges alleged against the respondent. The trial was conducted by the Superintendent of Police and the respondent submitted his explanation on 12th September, 1953. The Superintendent of Police, who conducted the trial, examined many witnesses and found that seven out of the nine charges had been established. Thereafter he issued a notice to the respondent calling upon him to show cause why he should not be dismissed from the police force. On 20th February, 1954, the respondent submitted his explanation and the Superintendent of Police, by his order dated 11th February, 1954, dismissed the respondent from service with effect from the said date. The appeal preferred by the respondent to the Deputy Inspector General of Police was dismissed by his order, dated 2nd June 1954. Thereafter the respondent on 25th August, 1954, filed a petition under Article 226 of the Constitution before the High Court of Judicature at Allahabad, Lucknow Bench, for quashing the order of dismissal.

Before the High Court three points were raised, namely, (i) as the petitioner was officiating as Sub-Inspector of Police at the time of the departmental trial the Superintendent of Police had no power to dismiss him since an order in such circumstances could only be made by a police officer senior in rank to a Superintendent; (2) the trial was vitiated by a number of serious irregularities and (3) the specific acts with which the petitioner was charged were cognisable offences and, therefore,



the Superintendent of Police had no jurisdiction to proceed with a departmental trial without complying with the provisions of sub-paragraph (1) of para. 485 of the Police Regulations. The learned Judges of the High Court held that the respondent was charged with committing cognisable offences and therefore sub-paragraph (1) of para. 485 governed the situation and that, as a result, as required by the said sub-paragraph, was required against the respondent in the police system, the order of dismissal was invalid. They further held that the case was not opened by the first proviso to sub-paragraph (1) of para. 485, as, in their opinion, the uniform case about the commission of the offence was not in the first instance referred by the Magistrate and forwarded to the police for inquiry. In view of this finding they found it unnecessary for them to express any opinion upon other arguments which had been advanced on behalf of the respondent. In the result, they issued a writ in the nature of certiorari quashing the impugned order. Hence the appeal.

Mr. C. S. Agnew, learned counsel appearing for the applicants raised before us the following points: (1) The Governor exercised his pleasure through the Superintendent of Police, and, as the Police Regulations were only administrative directions, the non-compliance therewith would not in any way affect the validity of the order of dismissal. (2) If the order of dismissal was held to have been made under the statutory power conferred upon the Superintendent of Police, the regulations providing for suspension in the first place under chapter XIV of the Criminal Procedure Code were only directory in nature, and inasmuch as no prejudice was caused to the respondent the non-compliance with the said regulations would not affect the validity of the order of dismissal. (3) The Superintendent of Police was authorized to follow the alternative provision

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prescribed in sub-paragraph (2) of para. 486, and thereby the inquiry held without following the procedure prescribed by rule 1 was not held. (4) As the magisterial inquiry was held in respect to practically all the charges, the subject-matter of the departmental trial, the one is not covered by the provisions of para. 486 of the Police Regulations.

In the case of *The State of S. P. v. Subu Ram Upadaya* (1), in which we have just delivered the judgment, we have considered the first three points and for the reasons mentioned therein we reject the first three submissions.

The appellants were accused on the fourth submission. From the facts already narrated, the conduct of the respondent, when he was officer in-charge of the Police Station, Intankok, was the subject-matter of magisterial inquiry. The Sub-Divisional Magistrate made inquiry in respect of seven of the charges which were the subject-matter of the departmental trial and submitted a report to the District Magistrate. The District Magistrate, in his turn, made an endorsement on the report and recommended the same to the Superintendent of Police recommending the transfer of the respondent and suggesting that in the meanwhile the work of the respondent might be closely watched. Though the Superintendent of Police gave at first a good certificate to the respondent, in respect of the same a further probe was made through the CID. Thereafter the Superintendent of Police conducted a departmental trial in respect of the affected seven charges and two other new charges of the same nature. The inquiry ended in the dismissal of the respondent. In the circumstances it would be hypothetical to hold that there was no magisterial inquiry in respect of the



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express terms of para. 4(b)(c). The fact that as the investigation the police received further complaints or that the C.I.D. made further enquiries do not affect the question, if substantially the subject-matter of the departmental inquiry and the departmental trial is the same. In this case we have held that it was substantially the same and therefore the departmental trial was wholly valid. We, therefore, set aside the order made by the High Court. As we have pointed out earlier, the High Court, in the view taken by it, did not express its opinion on the other questions raised and argued before it. In the circumstances, we referred the matter to the High Court for disposal in accordance with law.

The cost of this appeal will abide the result.

(PER GAGGARWALLAH AND WATSON, JJ.)

WATSON, J.—We have read the judgment just delivered by our learned brother SCARIA RAO, J. We agree with the order proposed by him. One reason for agreeing to this conclusion was, however, the same which we have given in *The State of Uttar Pradesh v. Babu Rao Upadhyay* (1).

*Case remitted*



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the case is a fit case for appeal to the Supreme Court, and before its announcement with the opinion of the Bench by which it was handed. The opposite party was cited before a Magistrate for the offence of section 141 of the Employees Provident Fund Act read with paragraph 78 of the Provident Fund Scheme. The Magistrate convicted him, but on appeal the Sessions Judge acquitted him. The State preferred an appeal from the acquittal which was dismissed by our brothers Viner, Davis, Macnaghten and Tamm. The question raised in the appeal before them was of the effect of the number of workmen employed in a factory falling below 50 after the scheme had come into force. It was held by them that after the number of workmen employed in a factory by the opposite party fell below 50, he was not bound to implement the scheme and could not be convicted under section 141(x) of the Act. The State raises a certiorari under Article 134(1)(c) on the ground that the question of law decided by our learned brethren is of sufficient importance to justify its being raised before the Supreme Court.

Article 134(1) of the Constitution is as follows:

"An appeal shall lie to the Supreme Court from an *judgment, final order or sentence* in a criminal proceeding of a High Court *if the High Court—*

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death, or

(b) has withdrawn the trial before itself or has from any cause substantiated to its satisfaction and has in such trial convicted the accused person and sentenced him to death, or

(c) certifies that the case is a fit case for appeal to the Supreme Court."

is to be noted that there are two matters dealt with this provision—(1) of the maintainability of an appeal to the Supreme Court and (2) the granting of a writ. Clause (c) and (3) goes to no person, who has an conviction and sentenced to death by a High Court, absolute right of appeal to the Supreme Court, while clause (1) gives a right on the basis of a conviction of no one for appeal granted by the High Court.

The question whether an appeal lies to the Supreme Court under Article 134 is not within the sole jurisdiction of the Supreme Court; a High Court has already no jurisdiction to decide this question. In fact a writ granted by the High Court does not bind the Supreme Court and their Lordships are in a proper position to hold that the certificate should not have been granted by the High Court. All that the High Court has to do is to prima facie satisfy itself that the order sought to be appealed from is one contemplated by the first part of Article 134 and then to see whether it also meets the requirements of sub-clauses (a), (b) or (c) of rule 134(1). If the order sought to be appealed from is a judgment, final order or sentence in a criminal proceeding, the High Court cannot grant a writ under clause (c) of Article 134(1) however erroneous the judgment may be. A High Court does not come into the picture at all when an appeal is filed under clause (a) or clause (b), but it does when an appeal is to be filed under clause (c) because an appeal cannot be filed unless the High Court grants a certificate of fitness for appeal which the High Court can only do if it is satisfied not only with regard to the merits of the appeal but also with regard to the fact that it is one of the orders contemplated by Article 134(1).

In this case it would not be necessary for us, except in the limited cases which we have mentioned above, to decide whether an appeal lies under clause (c) from

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J. G. LAURENCE  
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an order of acquittal passed or maintained on appeal by a High Court. But if we turn to Article 14, we would have no hesitation in deciding it in the affirmative. Article 144 grants a right of appeal from "any judgment, final order or sentence." The words are as wide as they could be. The Article makes no distinction whatsoever between one judgment and another as one final order and another or one sentence and another: an appeal lies from every judgment or every final order or every sentence, and is appealable to the Supreme Court if the condition laid down in clause (a) or (b) or (c) is fulfilled. When a High Court acquiesces as required in an appeal by him or maintains an acquittal, by a subordinate court or an appeal by the State Government or the complainant under section 377, Criminal Procedure Code the judgment, though of acquittal, is a "judgment" within the meaning of Article 144 and appealable to the Supreme Court. The words used in the Article being of the widest amplitude, it is not open to us to restrict their scope by saying that the "judgment" or "final order" must be a judgment or final order of conviction or maintenance of conviction. It is also not possible for us to reduce their scope in this manner.

In the case of *State of Orissa v. Minakrishna Pattnaik* [(1954) 10 S.C.R. 100] we referred to the view, that a High Court has no jurisdiction to grant a certificate referred to in clause (c) in a case of acquittal. We referred to the fact that an appeal against acquittal is not an ordinary feature of the English Law and that the Legislature of India has made a departure from it by specially providing for an appeal by the State Government from acquittal under section 377 and observed:

"It appears to me, therefore, quite clear that it would be against the policy of the Legislature to construe Article 144(c) of the Constitution in

IN A.D. 1955 FROM 202



permitting the High Court to grant leave to appeal as against the judgment of a judicial commissioning the appeal.<sup>10</sup>

With great respect we find ourselves unable to agree with the reasoning of the learned Chief Justice. An appeal is, as is well known, a matter of course, and no appeal lies, whether from conviction or from acquittal, without a statutory provision. If in English Law there is an appeal from conviction only, it is because there is statutory provision for an appeal from conviction and no statutory provision for an appeal from acquittal. The Indian legislature has expressly taken a different line from the British Parliament and created section 413, Criminal Procedure Code. Not only are we not governed by statutes enacted by Parliament but also, after the enactment of section 413, Criminal Procedure Code, it is not permissible to contend that an appeal from acquittal is foreign to the Indian legislature's policy. The learned Chief Justice did not, however, expressly decide that no appeal from acquittal lies to the Supreme Court under clause (g) and dismissed the application for a writ of *habeas corpus* for appeal on merits. This will be clear from the following observations made by him at page 56:

"Whether or not my view on this aspect is correct, I am inclined to think that in that case there are no sufficient grounds for concluding that this is a fit case for issuance here."

We find no support for the view that a judgment of acquittal by a High Court is not a "judgment" within the meaning of Article 134(3).

Coming to the question of a High Court's certifying that the case is *fit* for appeal, we find that it involves two questions: one of jurisdiction or power and the other of merits. The two questions are distinct from



The words "the case" occurring in clause (i) are not ambiguous, as to require any assistance from clauses (a) and (b) in their interpretation. There is no scope at all for the application of the principle of *quæstio generalis*, which was involved by a Bench of this Court in *State v. Kamlesh Mann* (i). With great respect to our learned brethren, who decided the case, we may point out that there are no genus and species in Article 134—no particular words (*species*) followed by a word of general import (*genus*). An appeal under clause (i) differs so fundamentally from an appeal under clauses (a) and (b) that the relationship of genus and species cannot exist between clause (i) on one side and clauses (a) and (b) on the other, and without such a relationship the application of the doctrine of *quæstio generalis* is impossible. Therefore, the circumstance that clauses (a) and (b) deal with an appeal by a married person is one of no relevancy in deciding what is meant by "the case" in clause (i). We have no doubt that a High Court is competent to grant the certificate referred to in clause (i) from its judgment of acquittal or maintenance of acquittal on appeal.

This application was referred to a larger Bench in our brothers before whom it was held, on account of a conflict between *State v. Kamlesh Mann* (i) and *State v. Tula Ram* (i). We respectfully dissent from the decision in the case of *Kamlesh Mann* and agree with the decision in *State v. Tula Ram* (i). The learned Judges who held in the case of *Kamlesh Mann* (i) and *Manojan Palani* (i) that a High Court has no power to grant a certificate referred to in clause (i) in a case of acquittal, thought that this was the decision of the Supreme Court in *State v. Ram Krishna Ganpatrao* (i). The Supreme Court dealt with an appeal filed with special

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(i) 1951 S.C. 101.  
(ii) 1951 S.C. 101.

(iii) 1951 S.C. 101.  
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from in the State of Madras Pradesh from an appeal  
 of order passed by the High Court of Nagpur on  
 appeal. The question whether a High Court has power  
 to grant a remission related to its clause (c) which it  
 explains the accused (or maintains his acquittal) under  
 section 417, Criminal Procedure Code) did not arise be-  
 fore the Supreme Court and was not answered by it.  
 The question dealt with by it was whether the appeal  
 should be allowed or not and its dealing with that ques-  
 tion (Muzumdar, J.) (as he then was) observed:

"The appeal is before us by special leave.  
 Article 134 of the Constitution permits an appeal  
 to the Court from any judgment, final order or  
 sentence in a criminal proceeding of a High Court  
 in the territory of India if the High Court has on  
 appeal reversed an order of acquittal of an accused  
 person and sentenced him to death. It does not  
 provide for an appeal from a judgment, final order  
 or sentence in a criminal proceeding of a High  
 Court if the High Court has on appeal reversed an  
 order of conviction of an accused person and has  
 ordered his acquittal. In other words, there is no  
 provision in the Constitution corresponding to sec-  
 tion 417, Criminal Procedure Code and such an  
 order is final subject, however, to the overriding  
 power vested in this Court by Article 135 of the  
 Constitution."

We are constrained to observe that these observations  
 have been misunderstood or misapplied. What the  
 learned Judge meant by saying that Article 134 does not  
 provide for an appeal from a judgment of acquittal pass-  
 ed by a High Court on appeal is that there is no such  
 provision in express words as there is for an appeal by  
 an accused against his conviction. Clauses (a) and (b)  
 give an accused, who is convicted and sentenced by the  
 High Court, an absolute right of appeal to the Supreme

Code, Section 407, Criminal Procedure Code also gives State Government an absolute right of appeal to the High Court from an order of acquittal by a subordinate judge. There is no similar provision which gives an absolute right of appeal to the Supreme Court from acquittal by a High Court. The learned Judge did not consider as all the provisions of clause (i) and did not decide that a High Court has no jurisdiction to grant a certificate of fitness for appeal from an order by which it acquits an accused on appeal or otherwise on acquittal on appeal under section 417. These observations were considered and explained by the Supreme Court in *State of Madras v. Gopichand Murthy* (1). The High Court of Madras on appeal had not made the conviction of an accused and acquittal him. The State of Madras obtained from the High Court a certificate of fitness for appeal under Article 133(1) (i) and preferred an appeal from the acquittal to the Supreme Court. The Supreme Court allowed the appeal, set aside the acquittal and restored the conviction. Its decision was based on the above-quoted observations and it was contended before it that the appeal was not maintainable under Article 133(1) (i). The learned Judge pointed out that decision in the case of *Bandrabhai Gopalrao* (2) was not a decision of a Concurrence Bench, that it was given in an appeal filed with special leave granted by it and that the observations were obviously made to emphasise that this Court should not, as an appeal by special leave, interfere with an order of acquittal passed by the High Court merely for correcting errors of facts or law. The learned Judge did not hear arguments on the scope of Article 133(1) (i) and expressly refrained from deciding whether a High Court has jurisdiction to grant a certificate mentioned in clause (i) or not because even if the

appeal  
was not  
maintainable  
under  
Section 417,  
the  
appeal  
was  
maintainable  
under  
C. J.

(1) 11 S.C.R. 486, 4 C.L.J. 248.

(2) 11 A.I.R. 1954 402, 4 C.L.J. 248.



The view that we take is supported by the view taken by RUSSELL and LINDLEY [1] in the case of *Faulkner*. We respectfully agree with their observation that the considerations relevant for section 417, Criminal Procedure Code, are not relevant when a High Court has to grant a certificate mentioned in clause (4) from an appeal.

We, therefore, hold that a High Court has jurisdiction so early that the case decided by it resulting in acquittal of the accused or maintenance of his appeal by a subordinate court is a fit case for appeal to the Supreme Court.

Coming to the merits of the application, we are satisfied that this is not a fit case for appeal to the Supreme Court at all. The questions of law that are involved in the appeal are under consideration before a Full Bench of this Court and would be authoritatively decided, as far as this Court is concerned, soon. In view of this fact we do not consider that it should be allowed to be raised before the Supreme Court. If the Full Bench decides against the State it will be open to the State to file an appeal to the Supreme Court from a sentence or by special leave.

In the result we dismiss this application.

*Application dismissed.*

1961  
ORDER OF  
JUDICIAL  
MAGISTRATE  
IN  
JAIL  
C. 1

## APPELLATE CIVIL.

*Before the Hon'ble Mr. M. C. Dwyer, Chief Justice and  
the Justice Division.*

A. K. BASHU, Deo. (Appellant)

vs.

RAMAIAH (Respondent)

**Transfer of Property Act, 1882 s. 101 as amended by U. P. Civil Laws (Bills and Amendments) Act, 1904.** It has retrospective effect and it affects the title given in 1900.

The question just arose for determination in the appeal viz. that is the U. P. Civil Laws (Bills and Amendments) Act of 1904 according to 101 of the Transfer of Property Act and one has retrospective effect and did not affect the title given in 1900 immutably at that time for a period of 17 days, beginning with the end of a month of the mortgage.

The Court held

(1) that the mortgage, being from month to month for an indefinite period is determined on the first of 1 1900 and ended on the last day of the month it began determined on the first day of the next month and terminated on its last day and so on.

(2) that the only right that the appellant possessed on 31st November, 1904 just before the enactment of the amending act, was that the monthly mortgage for the month of November, 1904 would not be extinguished except by a notice expiring on the last day of November, 1904, but he had no right whatever in respect of mortgage for future months.

(3) that the U. P. Civil Laws (Bills and Amendments) Act of 1904 which did not have retrospective operation, left only the right, possessed on 31st November 1904, in the mortgage given the account of transfer right, in issue.

(4) that the mortgage in 1904 was legal and the title was rightly decreed.

Second Appeal no. 143 of 1904, before a bench of Chaudhary Singh, Additional Civil Judge, Dault dated the 18th December, 1904. In Civil Appeal no. 218 of 1904 (Original Suit no. 737 of 1904)

The facts appear in the judgment.

Gopal Sahay, for the appellant.





into  
 a bill  
 passed  
 by the  
 House of  
 Representatives,  
 and  
 then, &c.

of arrears of quit rent has been derived in the equity below.

The only ground taken by the appellant in this appeal is that the U. P. Act did not have retrospective effect, i.e. did not affect the lease given to him in 1890 terminable by a notice expiring with the end of a month of the month, and hence the notice to quit given by the respondent terminating the tenancy on 14th November, 1891 was invalid. The U. P. Act came into force on 1st November, 1891 and the notice to quit was given about two years later. It was an accommodation with the provision of section 141 as it stood amended by the U. P. Act; it gave 30 days' notice. The contention of the appellant's counsel is that he had the vested right to remain in possession on any month up to the last day of it and that this vested right was not taken away by the U. P. Act. He relied upon section 3 of the U. P. Act saying that any amendment made by it would not affect any right already acquired. After having heard Sir Gopal Bhatt we find that no right had been acquired by the appellant on or before November, 1891, which was, if at all, affected by the notice to quit served upon him on 14th October, 1891. Since the tenancy was for an indefinite period, it was a tenancy from month to month, the tenancy commenced on the first of a month and ended on the last day of the month. It again commenced on the first day of the next month and continued on its last day, it again commenced on the first day of the third month and terminated on its last day and so on. The only right that the appellant possessed on 1st November, 1891 was before the enactment of the U. P. Act was that his monthly tenancy for the month of November, 1891 would not be terminated except by a notice expiring on the last day of November, 1891; he had no right whatever in respect of tenancies for future months, such as a tenancy for the month of

October, 1938. The U. S. Act, which did not have retrospective operation, left only the right possessed on and November, 1934 intact, and could prevent the accrual of tender rights in future. The notice served on 24th October, 1938 affected whatever right he might have acquired on 1st October, 1938, but that right did not exist on and November, 1934, and was consequently not saved by section 5 of the U. S. Act. The notice did not take away the rights acquired on and November, 1934.

1938  
 G. E.  
 B. Blank  
 to  
 Hon. Secy.  
 Dept. C. J.

Sri Gopal Sahani did not rely upon any other provision for the saving of his vested rights. Even if section 6 of the General Clauses Act had been relied upon, it would not make any difference because its language is similar to that of section 5 of the U. S. Act. Both the Acts save vested rights, that is, rights that were acquired before the American Act came into force.

We hold that the notice to quit was legal and that the suit was rightly decreed against the appellant, and dismiss this appeal with costs.

A request was made by Sri Gopal Sahani that we should prohibit the execution of the decree for a short period. We do not think we have the jurisdiction to prohibit the execution of the decree even temporarily, the respondent acquired a right to take possession of the house on 24th November, 1938 and we have no power to deprive him of that right. More than four years have passed since that right accrued in favour of the respondent and it would be most undesirable, even if we had the power, to stay the execution of the decree for some time. The appellant had enough notice to arrange for another accommodation if he was so needed. An executing court cannot go behind the decree. We, therefore, refuse to prohibit the execution of the decree for any period. For similar reasons we must refuse to modify

the decree is postponing the right to delivery of possession for a short period. The respondent suggested the right to immediate possession on 24th November 1895 and we could not disagree, and so the above mentioned item, C. 1, circumstances were unsatisfactory, if we were to take away something from A. He must, therefore, get the decree for immediate possession, and must be allowed to execute it at once. The prayer is consequently rejected.

*Appeal dismissed.*

**APOLLON, HERMES, CHIRONAL, HYSTIONCH**

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Below the Monomials M. C. Brown, Chief Author

John J. Follmer and Mr. Andrew J. Brown

REVIEWS



111

**Abrogation of title**—Sale of a portion of new and improved subdivisions of a proposed standard for the improvement of highways. New subject—Steps of duty of public use but not yet—Provisions for internal affairs—Treaty as a common law, legally disapproved of Ford *Abrogation of title*, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569,

Where there is no standard prescribed for any article of food,  
it is the duty of the owner to be as conservative as possible.

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Although the law has provided a standard for use, and health officials apparently there is no such standard for a minimum of the two values a proportion of the use is. The standard is, however, the provided standard for the maximum may be applied due to a simple mathematical calculation. Thus, where the proportion is not known it may be possible to estimate that average in various cases, where the quantity of such has a secondary value is low that the maximum prescribed for use, and it is possible to use such for the result of substances.

Managed Fund, Chairman: Jacques Koo (c); Managed Fund Manager: Pauline (c); secy: John, Chairman Fund: S. (c) (all listed)

It is true the public needs a clearly understood set of rules, and should know to what it is entitled. The public's analysis should stick to the expert's results, the results of his analysis and bring it to the Court to determine what is the particular standard for the particular article of food and whether the quality is more or less than the standard required, and then if he can determine the quantity of water in the sample without determining the quantity of solids he should use the measure of water solids based on the results.

Age Group	Male	Female
0-14	10	5
15-24	80	40
25-34	60	30
35-44	50	25
45-54	40	20
55-64	30	15
65-74	20	10
75-84	10	5
85+	5	2

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1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26



adulterated food. The case against the applicant was tried in a summary case and after the complaint made by the Inspector was read over to him he was asked to plead and he pleaded guilty. Previous to the conviction in this case he had been convicted for another offence under the same Act, he had submitted himself to the conviction and the sentence. On account of the previous conviction he has been sentenced under section 18(1)-(2) as for a second offence.

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The first question that arises is whether it has been proved that the milk that the applicant sold was adulterated or not. An article of food becomes an adulterated article of food in various ways mentioned in section 1(1) of the the Act. For instance, if its quality or purity falls below the prescribed standard, or if its constituents represent any quantities which are in excess of the prescribed limits of variability, or if any inferior or cheaper substance has been substituted wholly or in part for it so as to affect injuriously its nature, substance or quality it is adulterated. Before one deals with the question whether there is adulteration or not one must decide what is the article that is under consideration. In this case the article under consideration is a mixture of buffalo milk and cow milk; the applicant allegedly sold it as a mixture of cow milk and buffalo milk, he did not profess to sell pure buffalo milk or pure cow milk. He would be guilty of an infringement of section 7 only if he sold the mixture on an adulterated condition, i.e., if the quality or purity of the mixture fell below the prescribed standard, or if any inferior or cheaper substance had been substituted in it wholly or in part so as to affect injuriously its nature, substance or quality. Merely because it is a mixture it does not become an adulterated article. If he sold it as buffalo milk it can be said to be adulterated because it was mixed with cow milk which is inferior

or cheaper than buffalo milk. But he sold it as a mixture, and in order to obtain the effect of adulteration he must have adulterated the mixture with something inferior or cheaper or impure.

The mixture, as such, would be adulterated if its quality or purity fell below the prescribed standard, or if for it any cheaper substance was substituted or if it was not of the nature, substance or quality demanded by the purchaser and was to his prejudice, or was not of the nature, substance or quality which it purported or was represented to be. If the proportions of buffalo milk and cow milk was 1 : 1 but the applicant represented that it was half and half it could be said to be adulterated because it was not of the nature, substance or quality which it was represented to be. Neither in this case nor in any of the concerned cases has the milk been found to be adulterated on this ground. In this case there is no evidence of the proportion in which buffalo milk and cow milk were mixed together, in some of the concerned cases the accused represented that the two kinds of milk were mixed in a certain proportion but it has not been found on analysis that they were not mixed in that proportion. Now is it the case in any of the Revision applications that the applicant sold the mixture when the customer demanded buffalo milk, or that any impure article was mixed with it? All the applicants have been convicted on the ground that the milk did not conform to the prescribed standard. The standards for the two kinds of milk are prescribed in Appendix B to the Rules framed by the Central Government in exercise of the powers conferred by section 13 of the Act. Section 13(1) (i) empowers the Central Government to make rules defining the standard of quality for and fixing limits of variability permissible in respect of, any article of food. Rule 4 (1) (a) states the standards prescribed for



milk and milk products. Rule A. 11.01 simply defines "milk." Rule A. 11.02.01 prescribes standards for <sup>100%</sup> pure milk; every sample of pure milk as U.S. Grade must contain not less than 9.5 per cent of milk fat and not less than 8.5 per cent non-fat solids. The standards prescribed for bottled milk as U.S. Grade in rule A. 11.02.02 are that it must contain not less than 5 per cent of milk fat and not less than 9 per cent of non-fat solids. It is to be noticed that the standards prescribed under the Rules are only in respect of milk fat and non-fat solids and not in respect of water. A sample of milk will be deemed to be adulterated if the milk fat and the non-fat solids are less than the prescribed minimum or if the non-fat solids are less than the prescribed minimum; no mention of water is prescribed at all and whether milk is adulterated or not, the meaning of sections 5(1) (b) or not does not at all depend on the quantity of water. Rule 44 of the Rules prohibits sale of "milk which contains any added water"; therefore sale of milk, in which water has been added, is an offense punishable under section 5(1) (b), regardless of the question of adulteration. If a person is accused of selling milk with added water in contravention of rule 44 it will be necessary to prove that water was added to milk that was being sold, and this can be done either by direct evidence of an eyewitness or by the evidence of an expert, who, on chemical analysis, finds that water has been added. When however a person is prosecuted not for infringement of rule 44 but for infringement of section 7, which prohibits sale of adulterated food, the question is whether the article of food is adulterated or not. Again, it can be proved to be adulterated by showing that water, which is an inferior and cheaper substance than milk, is added to it and the addition is to the prejudice of the purchaser, and this would require direct evidence of a witness

100%  
pure milk  
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contain  
not less  
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1939  
Food and  
Drugs  
Act, 1938  
(Section 1)

who has seen water being added or an expert opinion to the effect that water has been added. Adulteration can also be proved by showing that the quality or purity falls below the prescribed standard, and usually adulteration is sought to be proved in this manner. In this and other cases milk is sought to be proved to be adulterated not on the ground that water has been added but on the ground that its quality and purity falls below the prescribed standards. In such a case the public analyst has only to consider the standards prescribed in Rules A, as an aid and should not go out of his way to find the percentage of added water. It is not known that he can find the percentage of added water independently of the quantities of the milk fat and non-fat solids found present in the milk analyzed by him. Presumably he finds the quantity of water only by deducting the quantities of milk fat and non-fat solids from the weight of the sample analyzed by him. If so, it is quite useless because his finding that the milk fat or the non-fat solids, or both are less than the prescribed maximum would in itself be holding that the milk is adulterated, and it is more repetition to say that it is adulterated because water has been added to it. Unless he can find the quantity of added water without determining the quantities of the milk fat and the non-fat solids, he should not state anything about added water in his report.

No standard is prescribed for a mixture of cow milk and buffalo milk, but this does not mean that a mixture of the two milks can never be found on chemical analysis to be below the prescribed standards. When the two milks are mixed together, they retain their individual characteristics, what results is a mixture and not a compound having characteristics entirely different from those of either of the two ingredients. When a person sells mixed cow and buffalo milk, he is fact sells one

milk and buffalo milk, and if either or both can be found to be below the prescribed standard, he cannot the effect of selling an adulterated article of food. It is not essential to prove which of the two milks that he sells is adulterated; it is sufficient if it is proved that either one or the other is adulterated. (For both are adulterated) because a person can always be convicted in the alternative. It is not impossible to prove that either one or the other is adulterated. If the proportion in which the two milks are mixed together is known, one can always determine the minimum quantity of milk fat and the minimum quantity of non-fat solids that should be present in the mixture, and if the quantity of milk fat or the quantity of non-fat solids is less, it means that the mixture is below the standard. For instance, if the mixture of one lb. the proportion of buffalo milk and cow milk is 4 : 1, it must have at least .34 lb.

$\left(\frac{.45 \times 4}{5} + \frac{.15 \times 1}{5}\right)$  of milk fat and .15 lb.  $\left(\frac{.0004 \times 4}{5} + \frac{.0001 \times 1}{5}\right)$  of non-fat solids and if the mixture has less of either, it is adulterated. It may not be ascertained which of the two milks is adulterated but this is not required in all. If the quantity of the milk fat or of the non-fat solids is more than the total of what they should be according to the prescribed standard, the mixture may still be adulterated but the adulteration cannot be proved because it may be that the deficiency below the prescribed minimum in one kind of milk is made up by an excess in the other kind of milk. But, if the quantity of milk fat or non-fat solids is less than the total of the prescribed minimum, the mixture must be adulterated, because if each of the two milks had more than the prescribed minimum, the mixture must necessarily have had more than the aggregate of the prescribed minimum. In such a case it is immaterial to say that the mixture cannot be proved to be adulterated because there is no standard prescribed for a mixture. There can be no

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 Page 735  
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 No. 1, 2

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Henderson  
v.  
Laurie  
(1952, 1 C.J.)

standard prescribed for  $\gamma$  mixture because there is no need for it: the standard depends upon the proportions in which the two kinds of milk are mixed together, and it is a matter of simple arithmetical calculation to find out what should be the minimum quantity of the milk, less one of the non-lumpy solids. When no standard has been fixed, the court has to fix a standard, as pointed out in *Morris v. Long & Co.* and the Court should fix a standard for the particular mixture.

Even if the proportions in which the two milks are mixed is not known, the plaintiff can in certain circumstances be proved to be below the prescribed standard. If the total quantity of milk less one of the non-lumpy solids is less than the prescribed minimum for cow milk, it is below standard. The prescribed minimum for cow milk is lower than that for buffalo milk. If buffalo milk is added to cow milk, the quantity of the milk less one of the non-lumpy solids will necessarily be more than if equal quantity of cow milk were added instead of buffalo milk. Thus, by addition of buffalo milk the percentage of the milk less one of the non-lumpy solids increases but can never decrease, and if a mixture has less percentage of the milk less one non-lumpy solids than the prescribed minimum, it is substandard. In the present case the quantity of the milk less one was more than the minimum prescribed for cow milk, though less than the minimum prescribed for buffalo milk, less the quantity of the non-lumpy solids was less than the minimum prescribed for cow milk, and either the buffalo milk or the cow milk contained in the mixture of both kinds of milk were substandard and the applicant was guilty. What ever might have been the proportion in which the two kinds of milk were mixed, the total quantity of the non-lumpy solids could not have been less than 5 g. per cent of weight of them was substandard. Surely, he could



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either it would be likely for him to do so. We have not fully agreed with our learned brother's that an expert in his report should not give his opinion about the quantity of added water; it is for the Court to decide whether water has been added artificially or not. In the instant case also the expert has stated in his report that the sample of milk contained as much added water without stating what was the quantity of water actually found by him in it. It is the function of the Court to determine in accordance with the law what is the maximum quantity of water permissible in unadulterated milk and then decide whether the sample contained more than it or not. In *Belkowsky v. Davis* (1) *Conington, J.*, said at page 393 that the proper course for an analyst to adopt is to write down the result of his analysis. A statement of an analyst that the sample contained 15 per cent. of excess water over and above what was allowed by the Act was adversely criticised in *Harley v. Jones* (2) *Butt, J.*, observing at page 416

"In the present case all that the analyst states in his certificate is that he finds the excess of water to be 15 per cent. over and above that which is allowed by Act of Parliament. It comes to this, that he relies upon himself to act as the judge of law and fact whereas those questions are for the magistrates to determine. To enable us to act on the certificate we must know what the analyst finds in fact. The statement as to an excess of 15 per cent. is quite insufficient for there is no statement above what amount in fact the excess is. The analyst ought to determine as a matter of fact how much water there is in the pint of milk and, as he has not done so, the certificate is not in such a form as to amount to evidence on which the magistrates could act."

The analyst's certificate to the effect that the sample of milk contained "15 per cent. of added water" was held to mean 15 lb. of

(1) 14 Q.B. 389. (2) 14 Q.B. 416.

to be laid in *Foster v. Monson* (1) *Hirsteva, J.*, observing at 749<sup>1</sup> 750:

"It  
must be  
shown  
that C. J.

"A certificate must state such facts as will enable the tripartite themselves to come to the conclusion whether the article of food in question had, or had not, been adulterated. To say merely that a sample of milk contained 3 per cent. of added water is only to state the analyst's own opinion that water has been added. The Magistrates have to exercise their own judgments on the question. They may adopt one standard, the analyst another. They ought to be informed by the certificate what was the total percentage of water found in the sample."

We may also refer to *Bridge v. Howard* (2) in which the analyst said in his certificate that the sample of milk contained 8 per cent. of added water and that his opinion was based on the fact that it contained as much per cent. of the non-lacty solids as against the prescribed maximum of 8.5 per cent., and it was held that the certificate was good. The certificate was held to be good because of the statement contained in it that the percentage of the non-lacty solids was less than the prescribed maximum. The certificate was bad in respect of the statement that the sample contained 8 per cent. of added water but, as explained earlier, the statement being based on the quantity of the non-lacty solids was altogether false and, therefore, the defect in the statement was material. We have taken pains to discuss this matter at length because we find that usually the public analyst mentions in his report the percentage of added water though his opinion is based only on the quantities of the milk fat and the non-lacty solids found in the sample and that he mentions not the actual quantity of water found by him in the sample but his opinion as to how much of it was natural and how much added for adulteration. It is

(1) 2 L. R. 1499 = Q. B. 188. (2) 2 L. R. 1082 = Q. B. 96.

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since the public analyst clearly understood the scope of his duty and confined himself only to what lay within it. We trust that in future the public analyst will state in his report merely the results of his analysis and leave it to the court to determine what is the prescribed standard for the particular article of food and whether the quality or purity of the sample falls below the prescribed standard, and then if he can determine the quantity of water in the sample without determining the quantity of the solids he will state the quantity of water actually found in the sample leaving it to the court to determine how much, if at all, was added water. Our learned brother, after regarding the evidence about the percentage of added water observed, "In the absence of any standard prescribed by the rules . . . with respect to the quantity of fat present in the case of mixed milk of cow and buffalo, it is not possible to hold that the sample was adulterated" and held that the mixture was not proved to be below the prescribed standard. We respectfully disagree with this observation of my learned brother. It is possible in the circumstances mentioned above to find that a mixture of the two kinds of milk is below the prescribed standard. Justice Rao ought to have been instructed and the decision in the case does not lay down the correct law.

We were referred to another case *Municipal Board of Amjara, v. Justice* (2) decided by our brother Duttaj. There also the proportion in which the two kinds of milk were mixed was not known, the Public Analyst found that the mixture contained 4.5 per cent. of milk fat and 7.4 per cent. of non-fat solids and 13 per cent. of added water. The quantity of non-fat solids was less than the maximum prescribed for cow milk and therefore, the mixture was undoubtedly adulterated. Our learned brother, however, acquiesced the accused



He also over-emphasized the fact that the rules do not prescribe any standard for mixture. With great respect we point out that no question at all is raised for a mixture when the quantity of milk fat or of non-fat solids is less than the prescribed minimum for cow milk. In this case the public analyst, not knowing the proper way in which the two kinds of milk were mixed, assumed that they were mixed half and half and took the mean of the two prescribed minima for the two kinds of solids and applied the means to find whether the prescribed standard was maintained or not; he was certainly in error in doing so. In what proportion the two milks were mixed was not a matter of assumption at all. Only one presumption is permissible under the rules and it is that contained in rule A. (1) to (3) and it is to the effect that where milk is sold as offered for sale without any indication as to whether it was derived from cow, buffalo, goat or sheep, the standard prescribed for buffalo milk shall apply. This presumption cannot apply when it is known that the milk sold as offered for sale is a mixture of cow milk and buffalo milk, even if the proportion in which the two kinds of milk are mixed is not known. The presumption applies only when the source is unknown. It is doubtful if it is intended to apply when milk is derived from two or more sources and, in any case, absence of indication as to the proportion in which milk derived from one source is mixed with milk derived from another source does not mean absence of indication as to whether it is derived from one source or another. In *Chandrika Prasad v. State*, (1) a mixture of cow milk and buffalo milk sold by Chandrika Prasad was found to contain 7.6 per cent of milk fat and our learned brother holding that the minimum without being adulterated as such could not possibly contain less milk fat than the minimum prescribed for cow milk, concluded that of adulteration. His decision supports the

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189  
(para 6.)

(1) *Central Reserve*, vol. 23, at 191, decided on 19th November, 1931.

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view than 14 mil. One brother [MORRIS J.] in his entry ring order in the numbered Reviews no. 1281 of 1976 stated that if a mixture of the two kinds of milk contains less than 3.3 per cent of milk fat, or less than 8.9 of non-fat solids, it is of course as quality below the standards of minimum. We respectfully agree with this view.

Since in the instance over the percentage of non-fat solids was less than the prescribed minimum for cow milk, the mixture of cow milk and buffalo milk was substandard within the meaning of section 16(1) (i), and the applicant was guilty under section 16.

Since he was convicted for an offence which was a second offence in the sense that it was committed after another offence had been previously committed, he could be punished under section 16(1) (ii). Section 16 (1) (ii) lays down that for a second offence the accused must be punished with imprisonment for a term not less than one year and a fine not less than two thousand rupees, in the absence of special and adequate reasons to the contrary. Here the Magistrate sentenced the applicant to six months' imprisonment and one thousand rupees fine; he did not require the minimum punishment because he found some special and adequate reasons to the contrary. The sentence that he imposed is less than the sentence that could have been imposed under section 16(1) (i) for the first offence. When he did not want to impose a punishment higher than what he could for the first offence, it is not understood why he resorted to section 16(1) (ii) at all. An offence punishable under section 16(1) (ii) may be tried as a summary case because punishment extending up to two years can be imposed, but the applicant was tried according to the summary case procedure, which was illegal. We are, however, satisfied that no prejudice was caused to him by the Magistrate's adopting summary case procedure instead of warrant case procedure. In *P. N. Sharma*

could not state what prejudice was caused to him by adoption of the wrong procedure and the irregularity is curable under section 329 of the Code of Criminal Procedure. Even otherwise we could alter his conviction from that under section 38(1) (b) to that under section 38(1) (a) and treat him as a first offender and mitigate the sentence which is less than the maximum permitted for first offender.

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In the connected case no. 1901 of 1916 the proportion is whole cow milk and buffalo milk were mixed in one half, but the quantity of non-lactary solids was less than the minimum prescribed for cow milk and the applicant was rightly convicted. He was sentenced to six months imprisonment, the trial court taking into consideration the aggravating fact that he had been convicted under the U. P. Pure Food Act on 25 February 1922 for selling adulterated milk. Though it could not sentence him under section 38(1) (i) and did not prefer to sentence him under that provision (because the first offender was not under this Act but under another Act), it had to take his antecedents into consideration when imposing the punishment and his conviction for selling adulterated milk was a fact which could legitimately be taken into consideration. It has already taken into consideration his old age and refrained from making the punishment rigorous and there is no scope for any reduction in the sentence.

In the connected case no. 1916 of 1916 the proportion of cow milk and buffalo milk was known from before as being 1 : 1. The applicant himself professed to sell a mixture of one part of cow milk and two parts of buffalo milk. The percentage of milk fat in the sample was 1.0 which was far below the minimum prescribed even for cow milk. The percentage of non-lactary solids also was less than the minimum prescribed for cow milk.

There is no doubt whatsoever that the milk was grossly adulterated and the applicant was rightly convicted. Whether he had offered the milk for sale or not was a matter of fact. The evidence of the Inspector is to the effect that he had exposed it for sale and this evidence was not challenged in cross-examination. As against it there was only the applicant's statement that he had not exposed the milk for sale and that it was meant only for use in tea. It was for the courts of fact to decide whether he had exposed the milk for sale or whether he had kept it for private consumption. Their finding that he had exposed it for sale or not or all improper. This case was referred to a bench by our brother D. J. Merrett, who said in the referring order that it was not clear whether the milk sold by the applicant was buffalo milk or cow milk, or a mixture of the two kinds of milk and that if the nature of milk was not known, it could be presumed to be buffalo milk. Actually there was evidence that the applicant pretended to sell cow milk and buffalo milk mixed in proportion of 1:4. There is, therefore, no question of resorting to the presumption contained in rule 4, 11.21.24.

Coming to Criminal Revision no. 1958 the proposition in which cow milk and buffalo milk were mixed was known, to being 1:4. Since the proportion was known there was no difficulty in applying the prescribed standards and the milk was undoubtedly adulterated according to them. The question put to the applicant by the Magistrate was correctly worded, but no prejudice has been caused to him. He pleaded not guilty and said that he was not the owner of the milk, and that he had sold it as a broker from on behalf of the co-operative society. Under section 14 read with section 3, not only the master but also the servant who actually does the act of selling or distribution is liable. Even if it be said that the applicant was being the owner of the milk



## (FULL BENCH) CIVIL MISCELLANEOUS

—

*Before the Honourable M. C. Datta, Chief Justice of  
Justice J. Saks and Mr. Justice B. Datta.*

KALYAN SINGH (Petitioner)

v.

STATE OF UTTAR PRADESH AND OTHERS  
(Respondents)

**Appeal to Supreme Court** from an order dismissing a petition for certiorari and mandamus—*Certiorari* for leave to appeal granted in the High Court—*Power of High Court to grant certiorari when no previous application—Certiorari of State, 1950, 101 (1951) 10—Code of Civil Procedure, 1908, O. XII, r. 13 and s. 133.*

Consequent to the nationalisation of transport services and the dissolution of the State as a particular State, the petitioner moved the High Court for certiorari, quashing the various resolutions of the Government and the mandamus restraining the State authorities from interfering with his right to ply on the said route. The petition being dismissed the petitioner moved for, and was granted, leave to appeal to Supreme Court under Art. 133(1) (b) of the Constitution. In a petition to the High Court for an interim order restraining the State authorities from interfering with his right to ply on the route.

**Held**, per majority, R. Datta, J. dissenting that the High Court had no power to grant interim relief in such cases either under O. XII, r. 13 or s. 133 of the Code of Civil Procedure.

The rule provided in O. XII, r. 13 which could be invoked in such a case was sub-rule (1) (b) but the first part of that sub-rule does not obviously apply because the respondents in the petition are persons of the Court and cannot therefore be placed under any restriction. The second part of the sub-rule is equally inapplicable since the sub-judicament of the appeal is the refusal of the High Court to issue the writ in the rights claimed or wrong complained of which is not what state is the status doctrine.

Since the subject is exclusively State work and excluded from the provisions made under O. XII, r. 13, s. 133 cannot be invoked in this case.

*Civil Petition Number 147 of 1960 dated 19th October, 1960*  
(5) dismissed.

(By A.L.R. 102 126, 127)

Value of Goods, § 10, Order of O. P. v. *Mahabir Singh* (5) (Special).

Like First Appeal v. First Proceed (3) applied.

(Per B. DAS, J.)—The sub-paragraph of the appeal in this suit is the petitioner's right to ply the bus and is covered in the second part of sub-rule (a) (b) of O. N.R. r. 13 and the High Court has, therefore, the power to make the charges definite.

Since the power is specifically provided for under the abstract rule, there is no need of scope for the application of r. 13 of the Code.

Civil Misc. Application No. 1255 of 1981 in Supreme Court Appeal No. 28 of 1981 (arising out of Civil Misc. Suit No. 3128 of 1980).

[The case was at first heard by His. Hon. and Senior JUDGE, J.] who in view of conflict of decisions referred it to a Full Bench.

The facts appear in the judgment.

S. N. Kachar for the applicant.

[Senior Standing Counsel (K. B. Mathani) for the State.]

J. DAS, J.—The Full Bench has been constituted to answer the following question referred by a Bench consisting of our brothers JEC and SANKARANARAYAN.

"When a writ petition under Article 226 of the Constitution has been decided and the necessary certificate for filing an appeal to the Supreme Court is required under the Constitution has been granted has this Court jurisdiction to grant revision relief to the party seeking to appeal to the Supreme Court under Order XLV, rule 13 of the Civil Procedure Code or under section 131 of that Code or under any other provision of law?"

The question has arisen in the following circumstances.

Kalyan Singh (hereinafter called the petitioner) had a licence to ply his motor-carriage on the Kanpur-Bahadurganj via Chhapra route (hereinafter referred to

1981  
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Jas and Saravanna referred the case to a Full Bench of five of a conflict between the reported decisions of the Courts in *Ganga Prasad Sander Lal v. District Forest Officer, Dindori* (1) and *State of Uttar Pradesh v. Mahabir Singh* (2). Before our brothers Pat and Saravanna, it was contended on behalf of the petitioner that the application was maintainable under Order XLV Rule 13 and section 133, Civil Procedure Code, as also under Article 226 of the Constitution of India. In view of the decision of the Supreme Court in the case of *State of Orissa v. Mahendra Gopal Ranga* (3) the submission that the application for stay order could be entertained under Article 226 of the Constitution was withdrawn. We are now called upon to decide whether the application for interim orders made by the petitioner is maintainable under Order XLV, Rule 13 or section 133 Civil Procedure Code. Rule 21 of Chapter XXIII of the Rules of the Court, under the provisions of Order XLV Civil Procedure Code applicable to those cases also which are not governed by the Civil Procedure Code. The material facts are as follows:

\*Article 15. In cases not governed by the Code the provisions of Order XLV of the Code shall, so far as may be and with such adaptations and modifications as may be found necessary, apply."

In view of this rule we have to proceed on the footing that Order XLV, Rule 41 is applicable to final orders passed in a writ petition. The said provision reads as follows:

Rule 15. (c) Notwithstanding the grant of a certificate for the admission of any appeal, the degree awarded there shall be unconditionally reversed unless the Court otherwise directs.

1st Aff. says: All day. 2nd Aff. says: All day.  
3rd Aff. says: 12:00 to 1:00.

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(c) The Court may, if it thinks fit, on special cases shown by any party interested in the suit or otherwise appearing to the Court, —

(i) suspend any movable property in dispute or any part thereof, or

(ii) allow the decree appealed from to be executed, taking such security from the appellant as the Court thinks fit for the due performance of any order which the Supreme Court may make on the appeal, or

(iii) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from or of any decree or order which the Supreme Court may make on the appeal, or

(iv) place any party seeking the assistance of the Court under such conditions as to give such other directions respecting the subordination of the appeal as it thinks fit, in the appointment of a receiver or otherwise.<sup>1</sup>

This rule is divided into two sub-rules. Sub-rule (i) provides and declares that unless the Court otherwise directs the decree-holder shall have a right to execute his decree unconditionally notwithstanding the grant of a stay. Sub-rule (ii) deals with the powers of the Court in connection with the decree sought to be appealed from in the Supreme Court of India. Under the sub-rule a High Court can either on its own motion or on an application by an interested party in the suit suspend any movable property in dispute or allow the conditional execution of a decree or stay the execution thereof subject to security being furnished or place the party seeking assistance of the Court under such conditions as it thinks fit respecting the subordination



these civil proceedings which are not governed by the Code of Civil Procedure. It was conceded by Mr. E. B. Adams the learned junior Standing Counsel both before us as also before our brothers Ben and Brewster, that the order passed in the petitioners writ petition was a decree within the meaning of Order XLV, Rule 13 Civil Procedure Code by virtue of the provisions of Rule 1 of that Order. Consequently, there would be no difficulty in answering the question is abstract by saying that whether or not Order XLV, Rule 13 or section 191, Civil Procedure Code would apply to a case where a final order in a writ petition has been passed and a certificate that the case is a fit case for appeal in the Supreme Court granted, would depend upon the nature of the final order passed and the interest relief prayed for. It appears to me that what our brothers Ben and Brewster wanted us to answer was whether the particular application which the petitioner has made in this case for interim orders could be entertained either under Order XLV, Rule 13 or section 191, Civil Procedure Code. In other words, the question is whether the prayer that the petitioner has made is covered by any of the classes of Order XLV, Rule 13 or can be granted under section 191, Civil Procedure Code.

Learned counsel for the petitioner is relying upon clause (d) of sub rule (a). He is not invoking the provisions of clause (b) or (c) of that sub rule which obviously cannot apply in this case. It is, therefore, necessary to consider the precise scope of clause (d). To me mind by means of that provision the Court has been given the power to put in terms any party who has sought its assistance i.e., who has applied to it for an order in respect of the subject-matter of the appeal. It also gives the power to the Court to make any other direction in respect of the subject-matter of the appeal.

e.g. an order appointing a receiver of the property in dispute or even to issue an injunction. It is however clear that it is only the parts which are seeking the assistance of the Court which can be placed under conditions and not the other parts. A Division Bench of this Court in the case of *Lala Atam Ram v. Ram Prasad* (1) while dealing with the scope of this clause observed as follows:

"It is further clear that sub-rule 1(f) also cannot apply because that deals with the power of the Court in placing any party seeking the assistance of the Court or giving other directions respecting the subject-matter of the appeal. That sub-rule obviously refers to cases where a party is to be put in certain terms or where some order has to be made regarding the custody or disposal of the subject-matter of the appeal."

I find myself in respectful agreement with this view. The petitioner's case cannot obviously fall in the first part of clause (f). In effect what the petitioner has prayed for is that, notwithstanding the dismissal of his petition, he may be allowed to ply his stage carriage on the route and the respondents be restrained from in any manner interfering with the petitioner's doing so as if the petition had been allowed. Under the first part of clause (f) the petitioner who was the party seeking the assistance of the Court could be put on such conditions as the Court thought fit and the plain meaning of the words used in that part of clause (f) warrants the conclusion that the respondents in this case who are not the party seeking the assistance of the Court cannot be put under any conditions. The language is so clear that no authority is needed in support of this conclusion. However if one was necessary, the

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decree of the Madras High Court in the case of *Rajahmundry E. S. Corporation v. State of Madras*, (3) can easily be pointed out. It has now to be considered whether the prisoner's application can be entertained under the second part of clause (d).

While interpreting clause (d) or any other clause of sub-rule (1) of Order XLV, Rule 15 it must not be forgotten that the powers are given only for the purpose of interim protection of the subject matter of the appeal. The Court has no jurisdiction to in effect modify, alter, reverse or supersede even, temporarily the decree or the final order already passed. If the cannot be done directly it can also not be done indirectly by means of a direction under Order XLV, Rule 15 (a) (d), Civil Procedure Code for what is prohibited being done directly cannot be done indirectly [see *Maddala v. Madras and Port Sheppards Shipping*, (2) and *The Attorney General of Saskatchewan v. The Attorney General of Canada* [(5)]. It would be subversive to the scheme of the Code of Civil Procedure to hold that under the second part of clause (d) a direction can be issued which may have the effect of temporarily setting aside the final order passed by this Court in the prisoner's writ petition and replacing it by another. A decree or final order cannot be altered, modified, set aside or superseded by a mere direction; it can only be so done by another decree or final order. There is nothing in Order XLV, Rule 15 or any other provision of the Civil Procedure Code which can lend support to the view that a direction can be given under clause (d) which may have the effect of superseding a decree even though temporarily. The scheme of the Code is that even though a certificate has been granted the decree or the final order remains alive and valid till

(1) A.I.R. 1981 Mad. 295. (2) A.I.R. 1981 A.C. 648.  
 (3) A.I.R. 1981 T.C. 199.

decree. Any order that can be passed under any of the clauses of sub-rule (c) of Order XLV, Rule 13, must be ordered within the restrictions of not in any manner changing even temporarily the decree or the final order passed. Whereas orders can be passed respecting the subject-matter of the appeal and the operation of a decree may be stayed the nature of the order must be only to give interim protection. It cannot be an order completely different from and diametrically opposed to the decree or final order and one which may have the effect of bringing about a completely different result than the one provided for by the decree or the final order. In other words no direction can be given which may make the defendant party the winning party and the winning one the losing party. It must also be remembered that the general rule is that after a final order or decree is passed the Court passing it becomes *functus officio* and what thence forward, shall not abide in appeal. The decree or final order remains unchangeable and cannot be interfered with by the Court that passed it except under circumstances expressly provided for in the Code e.g., by means of a review under Order XLVII, Civil Procedure Code. The provisions of sub-rule (c) of Order XLV, Rule 13, must be interpreted in the background of this basic rule. Sub-rule (1) of Order XLV, Rule 13 clearly provides that notwithstanding the grant of a certificate the decree-holder shall be entitled to execute his decree unconditionally unless the Court otherwise directs. The proviso under sub-rule (c) of this rule must, therefore, be read subject to these basic principles and it is not permissible on the basis of a direction under clause (d) to make an interference on the decree or final order itself.

Learned counsel for the prisoner has placed reliance upon the case of *Ganga Prasad Srivastava* *Lef v. Districtal Forest Officer, Dehra Dun* (1). In that case Ram-Gopal

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[1901]

Prasad Sander Lal had obtained on 10th April 1901 a decree for 5 years from the Raja of Sagarwall for collection of trade taxes the manufacture of honey from 2 towns in Marajpur District. The provisions of the G. P. Extension, Abolition and Land Revenue Act, 1891, were extended to the area within which the towns of which Gajra Prasad Sander Lal had taken the decree for collecting trade taxes was situated. The Forest Department, notwithstanding the decree in favour of Gajra Prasad Sander Lal sustained the right to collect trade taxes in that town. One Behari Lal made a bid of Rs. 1,000 which was the highest: as the auction and the Forest Department, therefore, authorized him to collect the trade taxes: whereupon Gajra Prasad Sander Lal filed a writ petition in this Court against the Deansal Forest Officer and the State of Uttar Pradesh for a writ or direction to restrain them from interfering with his right to collect trade taxes. An interim order to that effect was issued the same day. The petition was dismissed later on and an application was made under Article 133 (2) (c) of the Constitution of India praying for a certificate that the case was a fit case for appeal to the Supreme Court, and a certificate was granted. The question that arose in that case was whether this Court could under Order XLV, Rule 14 Civil Procedure Code pass the same interim order which it had passed in the case when the writ petition was admitted. Our brothers Gossens and Unwin held that such an order could be passed under clause (d) of sub-rule (a) of Order XLV, Rule 14, and observed as follows:

"So far as the applicability of the clause is concerned, the case does seem to belong to the second category since the petitioner prays for an injunction to restrain the respondents from interfering with his rights of collecting trade taxes which is



the same thing as seeking a direction respecting the subject-matter of the appeal.

This inference is confirmed by the fact that the particular person of clause (d) mentions appears next of a resolver as one of the directions which a Court may give respecting the subject-matter of the appeal.

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Code. The facts of this case are very different from the facts before us. The act of the rehearing of proceedings would not have the effect of superseding the decree of the High Court and temporarily substituting it by another order inconsistent with that decree. Again from it is not to be seen that the learned Judges who decided this case did not consider the Full Bench decision of this case. Cases in *Lalram Singh v. case* (1), where a completely different view was taken. I am not able to agree with this decision also for the same reasons for which I have disagreed with the decision reported in *Rameshchandra case* (2).

Three other cases of the Calcutta High Court were brought to our notice by Mr S. N. Kishor. They are *Nanda Kishore Singh v. Ram Gopal Saha* (3) *Siddhartha Nath Ray v. Suraj Kumar Das* (4) and *Rameshchandra Prasad Ray v. Sri Subhakar Datta* (5).

In the first case the execution of a decree in respect of which an appeal was proposed to be filed in the Privy Council, was stayed even before leave had been granted. The Bench who stayed it consisted of Moonjeet and Bhowmoon, JJ. Bhowmoon, J. did not agree with Moonjeet, J., but because of clause 95 of the Letters Patent the opinion of Moonjeet, J., became the rule of the Court.

In the second case the Calcutta High Court purporting to act under Order XLV, Rule 13 and section 134 Civil Procedure Code stayed further proceedings in the suit pending decision of the application for leave to appeal to the Privy Council.

In the last case large sums of money were held in deposit in the High Court. An application was made for leave to appeal to the Privy Council. Before this application could be decided it was proved that the sums of

(1) 1961 2 C.L.R. 469. (2) 1957 1 C.L.R. 104. (3) 1957 1 C.L.R. 104. (4) 1957 1 C.L.R. 104. (5) 1957 1 C.L.R. 104.

money held in deposit be not paid to the decree-holder. The Calcutta High Court decided that the payment be not made till a particular date.

None of these three cases reach the point that requires a determination by us. The effect of the orders passed was not in any way to go behind the decrees passed in these cases.

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The learned counsel then placed reliance upon the case of *Ram Shankaramma v. Ramchandra Reddy* (1). In that case Ram Shankaramma, who was the daughter of the last male holder of a large estate, obtained a grant of succession by the revenue authorities to the estate. Ramchandra Reddy, who had been adopted by the widow of the last male holder, succeeded in getting the grant of succession in favour of Ram Shankaramma reversed whereupon Ram Shankaramma filed a writ petition in the Hyderabad High Court praying for the issue of writs of certiorari, prohibition and mandamus with a view not only to set aside the judgment against her, but also to have the estate referred as it had been under the supervision of the Court of Wards ever since the death of her father. That writ petition was allowed by a Division Bench of the Hyderabad High Court whereupon Ramchandra Reddy made an application for leave to appeal to the Supreme Court and also prayed for the stay of the order passed by the High Court as the writ petition of Ram Shankaramma. The Hyderabad High Court refused that order. This case again is a clearly distinguishable one and does not reach the point that it is contrary before us.

The last case on which reliance was placed on behalf of the prisoners is that of *In re B. an Advocate of Assam* (2). In that case a legal practitioner had been suspended for a period of three months. He made an

(1) A.I.R. 1922 Pat 19.

(2) A.I.R. 1922 All 199.

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application for leave to appeal to the Privy Council) and that Court suspended the operation of the order passed by it suspending the legal practitioner.

It would be noticed that the facts of none of the cases relied upon by the learned counsel for the prisoners except *Gunga Prasad Sander Lal v. Bhimdevji Parrot Officer, Delhi*, (1) are similar to the facts of the case before us. In each one of those cases there was no realisable decree or order the execution of which was stayed or there was a bill pending which the High Court thought fit to stay. The consequence of none of the orders passed in those cases was to supersede the decree already passed and to replace it by another order the intervalelly applied to the decree for the period of the pendency of the appeal in the Privy Council or the Supreme Court. The view that I am taking is not in consonance with the decisions of this Court in *Ram Narain v. Motiram Das* (2) and in *Lala Jai Ram v. Ram Prasad* (3) and that of the Calcutta High Court in *Lakshmeer Singh v. Shalivmeer Singh* (4) already adopted as an earlier part of this judgment. In circumstances similar to ours, the Assam High Court in *Jayabala Narayan Deb v. State of Assam* (5), the Rajasthan High Court in *Sajan Singh v. State of Rajasthan* (6) and the Madras High Court in *Rajakumari P. S. Corporation v. The State of Madras* (7) rejected the application made by the defensed parties for orders similar to one which is sought from us. I am in respectful agreement with the views of the learned Judges mentioned above. One more Court in the case of *State of Uttar Pradesh v. Mulharam Singh* (8) had dealt with a similar matter. In that case what had happened was that a writ petition had been filed for issue of a writ of certiorari for quashing

(1) 1901 B. 1041, 1042, 1043.  
(2) 1901 B. 1044, 1045, 1046.  
(3) 1901 B. 1047, 1048, 1049.  
(4) 1901 B. 1050, 1051, 1052.

(5) 1901 B. 1053, 1054, 1055.  
(6) 1901 B. 1056, 1057, 1058.  
(7) 1901 B. 1059, 1060, 1061.  
(8) 1901 B. 1062, 1063, 1064.

certain orders passed by the Commission of Holdings subject to the ground that several provisions of Constitution of Holdings Act were unconstitutional. A bench of this Court held that only section 14 of the Act was ultra vires the U. S. Legislature and quashed certain orders. The State of U. S., which was the respondent in that case, filed an application for certificate for leave to appeal to the Supreme Court under Article 133 (1) (b) of the Constitution and also made an application praying that the operation of the order passed by this Court in the writ petition be stayed. DRUM, J. (as he then was) held that the application could not be under Order XLV, Rule 15 Civil Procedure Code and also that there was no locus in the application. The other learned judge (JHA, J.) refrained from expressing any opinion on the legal questions with regard to the applicability of Order XLV, Rule 15, Civil Procedure Code, but agreed that on merits the application for revision order should be dismissed. I find myself in respectful agreement with the view of DRUM, J. (as he then was) that an application of that nature could not be entertained under the provisions of Order XLV, Rule 15, Civil Procedure Code.

In this case the Court has dismissed the writ application of the petitioner with costs with the result that the petitioner's prayer for the issue of a writ of mandamus commanding the respondents not to interfere with his right to ply his trade carriage on the route is also his prayer for a writ of certiorari quashing the impugned resolutions were rejected. There is, thus, no order which is capable of being executed, nor is there anything that can be stayed. There is also nothing in respect of which the Court can make any directions.

Such directions under clause (4) can be issued respecting the subject matter of appeal. The question then immediately arises, therefore, is what is the subject matter of appeal in the present case? It is well a

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claim with regard to a house or a piece of land or some other matter, the subject-matter of appeal would have been the house or the piece of land or the matter of money. In the present case the subject-matter of appeal can only be the right, which the petitioner was claiming in against the respondents and in respect of which he prayed for a judgment of this Court. Some times the word "this petitioner" has been treated to be an equivalent to a cause of action, see *Shah Ram v. Jagan Chaud* (1). In the present case the cause of action is the right claimed, or the wrong alleged to have been suffered, by the petitioner on the one hand and the alleged duty of the respondents on the other. It is obvious that no distinction can be made in respect of such a subject-matter under clause (4) of Order XLV, Rule 13, Civil Procedure Code as the matter by its nature is incapable of being amenable to any distinction. For these reasons I am of the opinion that Order XLV, Rule 13, Civil Procedure Code cannot apply to the facts of the case before us.

The other question which requires determination is whether the order prayed for by the petitioner can be granted under the provisions of section 151, Civil Procedure Code. This section merely preserves the inherent powers of the Court which it may possess and does not grant any new powers. There is good reason too, for the proposition that it does not apply where there is an express provision in the Code dealing with the particular matter. Order XLV, Rule 13, has been enacted to give relief after a certificate has been granted. The powers that the Court has got in such matters is exhaustively dealt with in that provision and if there is any thing which has been withheld and is not provided for in that provision, section 151 cannot be used as proviso for it, see *Mahomed Lal v. Gopal Prasad* (2).

(1) A.I.R. 1930 Cal. 287.

(2) A.I.R. 1932, 501, 502 (20 of 34).





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and dismissed the action. I am in disagreement as to principle between saving the distribution of a fund in which the Court has held the plaintiff not to be entitled, and saving the autonomy of an order to which the court has decided that a plaintiff is entitled to a fund.

On what principle does it do so? It does so on the ground that when there is an appeal there is to be preserved the *lis pendens* as to be considered as not at an end and that being so, if there is reasonable ground of appeal, and if not making the order to stay the execution of the decree of the distribution of the fund would make the appeal nugatory, that is to say, would deprive the appellant, if successful, of the results of the appeal, then it is the duty of the Court to interfere and suspend the rights of the party who in the *lis pendens* has gone, has established his rights. That applies, in my opinion, as much to the case where the action has been dismissed.

It is conceivable that the Court may have inherent power to pass orders preserving the subject-matter of dispute or to suspend the rights of the party who, so far as the *lis pendens* has gone, has established his rights, during the pendency of the appeal to the higher Court, if there are no statutory provisions dealing with the suspension of the execution of the order or the preservation of the subject-matter of the appeal during that period. There are, however, two obvious alternatives to the way of the permission. In the first place I have already held that there is a statutory provision in the shape of Order XLV, Rule 13, Civil Procedure Code which exhaustively deals with the powers of the court relating to the preservation of the subject-matter of the appeal and the suspension of orders appealed against and in such there is no scope for any inherent

persons. Secondly the petitioner has not asked for the suspension of the order passed in his writ petition. Apart from it, as the final order of the Court stands, what is there to preserve and what benefits can the petitioner get if the order passed in his writ application is suspended? The only effect suspending that order would be that the decree for costs may not be executed. In no case the effect of suspending the order passed by the Court dissolving the petitioner's writ application with costs can be of granting him the injunction he has prayed for. Even the case of *Potter v. Gray* (1) does not contemplate an order similar to the one prayed for in this case by the petitioner but only speaks of the order under appeal being suspended. This case does not in any way support the contention of the learned counsel for the petitioner that an injunction similar to the one prayed for by him can be granted by a Court exercising its inherent powers. It is clear that inherent powers cannot be invoked to nullify a decree and replace it by another thoroughly inconsistent with and diametrically opposed to it though only for the period of appeal in the Supreme Court. Besides, varieties of inherent powers of the Court are well recognized and new categories cannot be invented. The Civil Procedure Code makes ample provision for use of decrees of decrees in appropriate cases and it is not open to a court in the exercise of its suspended inherent powers to any extension in cases other than those provided for strictly on the ground that appeals etc. pending from them. Lastly, section 152 can only apply to cases where maintenance is required either in the interests of justice or to avoid an abuse of the process of the Court. It will be impossible for this Court to say that it would be against the interests of justice or would amount to an abuse of the process of the Court if it allows the order

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passed in, until in the next petition to operate. It is obvious that the Court would not have passed the first order in the next petition that it did pass if it had considered it either to be unjust or to have occurred in an abuse of the process of the Court.

For the reasons mentioned above I am of the opinion that as far as the present case is concerned, the question referred to us should be answered in the negative and it should be held that the Court has no jurisdiction to grant interim relief to the petitioner, which he has prayed for under Order XLV, Rule 13 or section 191, Civil Procedure Code. I am also of the opinion that the petitioner should pay the costs of the respondents in this case.

**F. DEAN, J.**—This Full Bench has been constituted to answer a question which has been referred to it in the following form:

"When a writ petition under Article 226 of the Constitution has been decided and the necessary certificate for filing an appeal to the Supreme Court as required under the Constitution has been granted has the Court jurisdiction to grant interim relief to the party seeking an appeal to the Supreme Court under Order XLV, Rule 13 of the Civil Procedure Code or under section 191 of that Code or under any other provision of law?"

The last few words of the question "or under any other provision of law" appear to be redundant as only these provisions were referred to before the Bench and there was no argument that under any fourth provision the order could be passed. One of these three provisions the Bench held that the powers of the Court under Order XLV, Rule 13 Civil Procedure Code and under section 191 of the Civil Procedure Code are such as require fresh consideration in a larger Bench. But

with regard to the third argument relating to the powers under Article III of the Constitution, the Bench was of the view that the matter was concluded by the Supreme Court in the case of *State of Texas v. Martin* (1904) 190 (1), and therefore, no relief could be granted under that article. In this view the Bench refused the above question relating to the powers of the Court under the first two provisions only. The general words added at the end of the question appear to have no special significance. We would, therefore, proceed to answer the question on those two points.

The facts of the case leading to the application, may be stated very shortly. The applicant held a permit to ply his rickshaws on a particular route which had been reserved for three years exclusively, according to the applicant, in connection with the inauguration of a part of the route this permit was cancelled prematurely by the State Government. This cancellation was challenged in a petition under Art. 226 of the Constitution in this Court and a writ of mandamus was granted for requiring the respondents not to interfere with his right to ply the rickshaws on the route and also praying for a writ of certiorari quashing the resolution of the Transport Authorities refusing to issue a permit. This petition was allowed by this Court on the 6th of March 1946. The applicant then applied for leave to appeal to the Supreme Court under Art. 132(2)(c) of the Constitution. That certificate has been granted to the applicant and it has been held by this Court that the case is fit for appeal to the Supreme Court. But the appeal has not yet been heard, due to procedural matters, which are likely to take some time. Along with this application for certiorari, the applicant also applied for suitable interim directions to the respondents asking them not

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on a point arising out of a writ petition. But of course, such modifications cannot alter the substance of the rule. The rule runs as follows:

Rule 14 (1) Notwithstanding the grant of a writ for the admission of an appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

(2) The Court may, if it thinks fit on special cause shown by any party interested in the suit or other case appearing in Court—

(a) suspend any movable property in dispute or the person thereof;

(b)

(c)

(d) place any party seeking assistance of the Court under such conditions or give such other directions respecting the subject-matter of the appeal as it thinks fit by appointment of a referee, or otherwise."

The issuance of the counsel for the applicant is that the provisions of rule 14 (1) (b) are wide enough to give powers to the Court to issue any directions respecting the subject-matter of the appeal if the Court considers that it is necessary to preserve the subject-matter of the appeal pending the appeal to the Supreme Court.

Latham counsel for the State contended that Rule 14 read as a whole applying only to a case where an executable decree has been passed and sub-rule (1) states that in case of an appeal to the Supreme Court the decree shall be unconditionally executed. Sub-rule (2) merely enumerates the circumstances under which execution may be stayed. According to him, sub-rule

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(c) cannot be applied in a case where there is no removable defect raised by the court. I am unable to agree with the construction of the learned counsel. The heading of this rule is "powers of the Court pending appeal". Although the heading cannot govern the rule itself but it does indicate in a nutshell the purpose of the rule. The heading does not say that there are the powers relating to execution during the pendency of the appeal. Sub-rule (1) of this rule expressly states as a general rule that the decree shall be executed unless the court order vice versa decrea. Therefore, it authorizes the Court to restrain the execution or to completely stay execution as it sees fit. After giving that wide power to stay, if the intention was to restrict it only to be exercised in accordance with the provisions subsequently following in sub-rule (2) the language should have been more clear. However, the language of sub-rule (2) does not indicate that these powers are restrictive of the power given in sub-rule (1). The main body of sub-rule (2) authorizes the Court on special cause being shown by any party interested in the case, may temporarily the judgment debtor against whom execution is taking place or even the state, to exercise any of the powers given in this sub-rule. It is difficult to restrict this wide language only to cases where an removable defect has been raised and some questions arise relating to that execution, since (2) of sub-rule (2) authorizes the postponing of any removable property "in dispute" or not paid thereof. It does not relate only to removable property against which execution is sought. Thus where the removable property is the subordination of deposit, it shall be disposed if no orders are passed. It is open to a Court under this power to temporarily postpone that property during the pendency of the appeal to the Supreme Court. It will be restricting this power



you wish to do, that the Court can only intervene if at a case where a decree is being executed against the movable property and in all other cases the Court is powerless to preserve the subject-matter of litigation and must permit it to get determined and under the Supreme Court appeal thereby futile.

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Clause (b) of sub-rule relates to execution but the purpose of the clause is to authorize the Court to take security from the decreeholder himself before permitting him to execute so that the ultimate decree passed by the Supreme Court may not become infructuous. It is not therefore, a power to alter the normal course of execution but to take security before refusing an order of sale under sub-rule (1). This clause also therefore cannot be read as an exception or a condition under which the general right under sub-rule (1) can be exercised.

Clause (c) of sub-rule (1) is just the counterpart of clause (b) and authorizes the Court to take security from the judgment-debtor before staying the process etc. It does not say that the Court cannot stay process etc. unless the judgment-debtor has given security and this clause also gives an additional power of demanding security from the judgment-debtor and is no restriction on the general power given under sub-rule (1).

Lastly clause (d) of this sub-rule authorizes the Court, in the first place to place any party seeking assistance of the Court under such conditions, as it thinks proper. It has been argued by the respondents that the term "party seeking assistance of the Court" must necessarily be the party which has obtained a decree as no one brings for it decree can seek assistance of the Court for executing that decree and realizing the fruits of it. But it may also be noted that a party which has lost a case and comes to the Court for an interim relief also seeks

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function of the Court is preserve the subject-matter of the litigation and it is in fulfilment the function of the Court, then the clause authorises the Court to put such parts to terms and grant the remission after allowing it, under such conditions as the Court thinks proper. This may be done by the Court either *sue vultis* or on the application of the opposite party which is opposing the interim relief. This sub-rule does not say that the person seeking assistance must be placed under conditions on the request of that person himself. In the same both of this rule it is clearly stated that these persons can be assisted in the instance of any party, to the litigation or otherwise for the Court itself. Thus there is nothing in the terms of this part of this clause (d) so indicate that the party seeking assistance of the Court must be the *devecholder* who has obtained a decree from the Court and who is seeking assistance for any of reasons. There may be case, where a decree has been granted by the trial court and the appeal by the defendant has been dismissed, and in such a case the appellant may seek assistance of the Court for stay of execution. In that case he will not be a *devecholder*, and the Court may put him to such terms as it thinks proper before granting the proper which prayer in this case will be granted under sub-rule (c) and the costs then will be imposed upon him under this clause (d) of sub-rule (d). I am, therefore, unable to accept that the term "person seeking assistance of the Court" must necessarily be the *devecholder* and in case where a person has lost an appeal can never be a party seeking assistance of the Court.

In any case, this part of the clause is not involved by the applicant. According to the appellant the second part of this clause (d) is applicable to his case. He relies upon the words "in give such other directions respecting the subject-matter of the appeal as it thinks



is wholly inapplicable. The first case relied is *Lalbahar vs. Singh & Bholaeram Singh* (2). In this case a joint ground partnership dispute had been passed by the trial court against which an appeal to the High Court had been dismissed and a further appeal to the Privy Council failed. It was argued and it was proved that as the majority judge's opinion of the final decree be varied. It was held that the Court did not possess such a power under this rule. It was expressly said by the learned Judge that the decree did not relate either to joint or to any party under conditions or to the subject-matter of the suit. The power merely was the setting of further proceedings which was not authorised by any of the clauses of this rule. This case is therefore, entirely distinguishable and no authority for a case where preservation of the subject-matter of litigation is prayed for.

This Calcutta case was followed by a Division Bench of this Court in *Lala Alun Ram v. Bora Pi* (3). The facts of this case were that a suit had been filed by the Court of Wards on behalf of a Hindu widow which was withdrawn and the respondent made an application that he be substituted as plaintiff and the suit be continued. This application was dismissed by the trial court. But on revision, the High Court granted the suit and decreed the suit to proceed with the new plaintiff. Later on appeal to the Privy Council was granted and an application was made to set aside proceedings in the suit. The observations of the learned Judge who composed this Division Bench regarding Order XVI, Rule 13 clause (2) of the Civil Procedure Code are as follows:

"This sub-rule obviously refers to cases where a party is to be put in default, where an interim order has to be made regarding the custody or disposal of the subject-matter of the appeal."

1. *Chow v. B. S. S. No.*

2. *11 L.R. 1001 (1911)*

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That then referred to an earlier Division Bench case of this Court in *Ram Narain v. Harwan Das* (i) and the Calcutta case mentioned above and agreed with the observation in those two cases that this rule did not authorize the staying of proceedings in the Court below. Thus the Calcutta case as well as these two Division Bench cases of this Court are wholly inapplicable to the facts of the present case. In these cases proceedings were sought to be stayed and it was merely said that there was no power to stay proceedings in the Court below. That is not the question in this case.

Reliance was then placed on the case of *Rayburns & P. S. Corporation v. State of Madras* (ii). In this case the learned trial judge was asked for an order that the Court may give stay of the operation of a certain Government order directing winding up of the petitioner Corporation pending disposal of the appeal to the Supreme Court. The learned Judge of the Madras High Court observed that the application was in effect asking for an injunction restraining the State from taking action in pursuance of the order passed by it directing winding up of the Corporation in the State. It appears that there was no question in that case relating to preservation of any property which was the subject-matter of that litigation or at least the case was not considered from that point of view. While observing that this rule authorized the Court to give such other directions that is to say, directions placing a party under any constraint or requiring the subject-matter of the appeal to be retained, in an order directing appointment of a receiver, they proceeded to hold that the provisions did not enable the Court to give any direction to the successful party in view of restricting or prohibiting it from exercising the rights to which it has become entitled under the final order of the Court. An earlier

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80 S. Ct. 1402,  
34-1 USTC ¶9544,  
10 AFTR2d 34-5811  
(S. Ct. 1961).

Division Bench decision of the same Court in *Reynolds v. United States*, 98 U.S. 145 (1878), was distinguished on the ground that in this case the execution of the final decree was sought to be stayed although the appeal to the Supreme Court was against the preliminary decree. This case has not decided whether or not a Court can give suitable orders to preserve the property which is the subject-matter of the litigation pending appeal to the Supreme Court under this rule. It may also be that probably no question of an *interim* change to the subject-matter of litigation could arise in this case. The Government under the order was taking over the Electric Supply Corporation and would have continued to run it. If the Supreme Court appeal was granted, the Corporation would again take it back.

On the other hand, a Division Bench of this Court in *Ghya Pil Sanderil v. Divisional Forest Officer, Dindigul* (5) held that the Court can restrain the opposite party from interfering with the petitioner's rights during the pendency of his application for a certificate under Act 133. The question whether the power can be exercised during the pendency of the application for a certificate before a certificate has been granted or not, is not before us and it is not necessary to go into this aspect of the case. Here a certificate has already been granted. In this case the learned judges held that the second part of clause (4) was independent and wide enough to arise any circumstances relating to the subject-matter of the litigation. With this observation I entirely agree with respect.

It may also be argued that in any case the proceedings in a writ petition cannot be said to involve the question relating to property or status. The object behind a

(4) 11 B. (1961) Mat. 42.

(5) 1961, A. L. J. 147.

very of contempt or disobedience to resolutions or judgments etc. is simply to keep the Courts and Tribunal within the limits of their jurisdiction and to compel them to exercise jurisdiction when it is necessary to do so. But it cannot be too early of that the party which comes in challenge a particular order of the Government may do so for the purpose of protecting its own right to certain properties and in such a case, the whole purpose of the writ is to protect the property and that property would be the subject-matter of litigation. The Court gives relief only in a case where the Government or the Tribunal has travelled beyond its jurisdiction in depriving the party of that property but that does not mean that there is no subject-matter of the litigation or that the jurisdiction of the Government or the Tribunal is the only subject-matter of a writ proceeding.

On a consideration of the whole question I would answer the first part of the question referred to this Full Bench by saying that the Court has jurisdiction in a proper case to grant an interim relief relating to the party seeking to appeal to the Supreme Court under Order XLV, Rule 13 of the Code of Civil Procedure.

The other part of the question whether the Court has power under section 13 of the Civil Procedure Code to grant an interim relief, it may be shortly said that under that section power can be exercised so far as necessary in the interests of justice or to prevent abuse of the process of the Court. There is no question of abuse of the process of the Court in a case like this and where express power has been given under Order XLV, Rule 13 of the Civil Procedure Code, there is no scope for exercising power in the interests of justice under this section. I would, therefore, answer this part of the question in the negative and hold that there is no power under section 13 of the Civil Procedure Code

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to grant an interim relief after a certificate of fitness for appeal to the Supreme Court has been granted.

DEAN, C. J. — I had the advantage of reading the judgment of my brother JUSTICE SWEET and I agree with him that the question should be answered in the negative and that the petitioner should pay costs of the original writs. Order 43, Rule 13 (1)-(3) does not apply. I have given my reasons for this view in *State of Ohio v. Pruden*, 11 *Middletown* 493 (5) and have very little to add. The words "give such other directions" may be interpreted as analogous to placing any party seeking the assistance of the Court under conditions and clause (2) comes into operation when a party seeks the assistance of the Court and then other conditions may be imposed upon him or such other direction in appointment of a receiver may be given. The words "party seeking the assistance of the Court" do not refer to the party to whom a writ of habeas corpus has been granted granting the certificate is not granting him the assistance of the Court. The clause comes into operation after a certificate has been granted and applies when after the grant of a certificate a party seeks the assistance of a Court in one way or another. Here the petitioner sought the assistance of the court by seeking a certain interim relief and if the relief is granted to him, it may be granted on conditions or subject to a direction respecting the subject matter of the appeal. Whether the interim relief should be granted to him or not is an entirely different matter not dealt with by the clause. The only clause that might apply is clause (1) but the interim relief that is sought is not covered by it.

The order under appeal to the Supreme Court is an order refusing to issue certiorari to quash certain writs *habeas corpus* published under section 10-C of the Motor Vehicle Act and mandamus commanding the State and others not to interfere with the possessor's right to ply





## (FULL BENCH) APPELLATE CIVIL

*Before the Honourable M. C. Datta, Chief Justice**Mr. Justice Mukherjee and Mr. Justice Datta*

KAILASH CHANDRA JAIN and others

(Appellants)

v

STATE OF UTTAR PRADESH and others

(Respondents)

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*Constitution of India, Art. 226 and U.P. (Benaras), Control of Road and Traffic Act, 1947, s. 3 and 3A—Appellate against application for permission to establish and to maintain a motor stand by the Commissioner—Whether the State Government should be asked for the record of the Regional Level licensing power under s. 3 of the act.*

*Held*, that seeking for the record is not a condition precedent to the granting of the order under s. 3A, the word "may" used in the section is permissive and not in the imperative sense.

It is no doubt desirable that the State Government should also send for the record of the regional level on the same subject, it cannot be said that the State Government acted illegally in not seeking for the record of the case before the additional Commissioner.

The argument that the order of the District Magistrate is illegal if he takes it on the Commissioner and therefore the record of the Commissioner alone suffices is not correct. Even though there may be a merger of one order in the another, there is no merger of the record in which the one order is passed.

An order of the Commissioner, granting a licence, against the order of the District Magistrate granting or refusing permission is not an order granting or refusing permission. The question of merger of orders therefore does not arise.

Further it has not been explained how the appellants was prejudiced by the State Government not transmitting the record of the Commissioner's case. Under the circumstances the Court is not bound to quash the order of the State Government.

His opinion was expressed on the question that the House should not, and that the State Government, had the power to enter parliament in the same way as the House. This question should more properly be raised before the Court than in front of the State.

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Special Appeal no. 901 of 1999 from a decision of Marone, J., dated the 14th September, 1999 in Civil Miscellaneous Petition no. 1004 of 1998.

### The best reason to stop smoking

### 3.3.3.3. *Recovery from the snowdrift*

### Appendix B: Generalized Linear Model

Devera, J. —Floor no. 10. Grandcentral Road. Allocated belongs to Behan Ltd. the 4th respondents. R. C. Jara, the 1st applicant, occupies a room the southern portion on the first floor. The 2nd and 3rd applicants occupy portions on the ground floor. One Behan Ltd. harbor, was tenant of another portion of the house. He is dead; and we are not concerned with him in this case. Sometimes in 1938 the 4th respondents applied under section 3 of the U. F. (Temporary Control of Rents and Profits) Act (hereinafter called the Act) to the Additional District Magistrate for permission to interfere a suit for evicting all the said tenants from the house. On 30th May, 1937 his application was rejected and on 17th July following his request was also dismissed by the Additional Commissioner. He however succeeded in obtaining an order from the State Government under section 3F of the Act permitting him to maintain a suit for the applicants' ejection. That order was made on 18th November, 1938. Then on 14th February, 1939, the applicants applied to the State Government for a review of an order. Their applications were rejected on 15 May, 1939.

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Before the appellants moved to *Quare*, the writ petition out of which this appeal has arisen, the 1st respondent had testified in the court of the 1st Additional Magistrate, Alibabadi, was for their rejection from the house.

At the hearing of the writ petition three questions of law were mooted on behalf of the appellants: (i) since the State Government did not send for the record of the Additional Commissioner, it had no power to make the impugned order under section 78, (ii) the State Government could not consider any facts, which were de hors the records of the Additional District Magistrate and the Additional Commissioner, and (iii) the State Government unsupported that it had no power to review its order.

The learned Judge, who heard the petition, answered all the questions against the appellants and dismissed their petition. They then filed the present appeal against his order. It was heard by *Mohammed, C.J.* and *Srinivasan, J.*, and by their order dated 7th September, 1960, they referred it to a larger Bench for decision, as they entertained considerable doubts as to the correctness of the view taken by another Bench in *Sri Lakshmi v. Suman Mahesh Babu* (i) (Special Appeal no. 24 of 1960, decided on 12th February, 1960). We shall refer to that decision later in our judgment.

In the present case the entire record of the case before the Additional District Magistrate was before the State Government. It is also not in dispute that the State Government did not send for the record of the revision before the Additional Commissioner. Copies of the grounds of revision before him and of his order were submitted before the State Government, but other documents, which were incorporated in the

(i) Special Appeal no. 24 of 1960, decided on 12th February, 1960.

record of the decision were not called for by the State Government.

On these simple facts learned counsel for the appellant sought to establish the validity of the State Government. According to him the State Government could not, as under section 7F without first sending for the record of the decision before the Additional Commissioner.

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This argument was not accepted by the learned judge. It was held undenied in Latimer's case (4)

section 7F of the Act may now be set out:—

"The State Government may call for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to in section 7 or requiring any accommodation to be let or not to be let to any person under section 7 or directing a person to vacate any accommodation under section 7A and may make such order as appears to it necessary for the ends of justice."

The first thing that strikes the reader is that the State Government cannot call for the record of each and every case; its power is limited to a case 'granting or refusing to grant permission for the filing of a suit for eviction referred to in section 7' or a case 'requiring any accommodation to be let or not to be let to any person under section 7' or a case 'directing a person to vacate any accommodation under section 7A'. Besides these three cases the State Government cannot call for the record of any other case arising under the Act. The most striking feature of the section is its unqualified wording, for it is difficult to conceive of a case 'granting or refusing' or 'requiring' or 'directing a person'.

The act of 'granting or refusing' or 'requiring' or 'directing a person' can be performed

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only by a person or an authority. One is therefore constrained to read some words after the word 'case', which are not already there, in order to make the sentence intelligible. I think some such words should be read after the word 'case' as 'in which an authority has made an order'. I have little doubt in my mind that the Legislature intended that the State Government should be empowered to call for the record of only that case in which an order 'granting or refusing or requiring or directing or directing' has been made by some authority. The true intention of the Legislature must be given effect to by the Court.

If the section is to be read as I think it ought to be, then it would follow that the State Government may call for the record of that case only in which an order granting or refusing to grant permission for filing of a suit for eviction has been made by an authority. I have omitted the other two types of cases for we are not concerned with them in this appeal. Now when an application for permission to prosecute a suit for eviction is made to the District Magistrate, he may either grant or refuse such permission. In either event a revision may be taken to the Commissioner. He may allow the revision and refuse or grant permission as the case may be, or dismiss the revision. He may also allow the revision and remand the case to the District Magistrate for deciding it according to law. When he allows the revision and grants or refuses to grant permission, I think that the proceedings before him constitute a 'case' within the meaning of section 68. When he allows the revision against an order granting permission to sue, the proceedings may perhaps be upon a 'case', for it may be said that he has, in effect, refused permission to sue. But when he allows the revision and remands the case to the

District Magistrate for refusing, I doubt if it can be said that he has granted or refused permission to sue. And when he upholds the order of the District Magistrate granting or refusing permission and dismisses the petition I have no doubt in my mind that the proceedings do not constitute a 'case' within the meaning of section 55, because he has not passed any order either granting or refusing permission; he has only declared in substance that the order of the District Magistrate. There is a decisive difference between the language of section 55 of the Code of Civil Procedure and section 54: in the former the Court has the power to call for the record of a case which has been decided by a subordinate court, so that even an order dismissing an appeal may be a case, but in the latter the 'case' must not be one merely decided by an inferior authority, but it must be a case in which an inferior authority has passed an order granting or refusing permission.

The State Government may call for the record of a case in which an authority has passed an order directing a person to vacate an accommodation under section 54. If such an order of the District Magistrate is set aside in revision by the Commissioner, it cannot be said that he has passed any order directing a person to vacate an accommodation, and his order cannot be reconsidered with by the State Government under section 74. If his order is set aside by the State Government I think it naturally follows that it cannot stand for the record of the case before him. This inference lends support to the view that I have already taken. It is no doubt desirable that the State Government should also send for the record of the revision, but on the view that I am taking, it cannot be said that the State Government acted illegally in not sending for the record of the case before the Additional Commissioner, who had dismissed the petition of the

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the respondent against the order of the Additional District Magistrate refusing him permission to sue.

It is argued on behalf of the appellants that when the Commissioner gives an order either allowing or dismissing the revision, the order of the District Magistrate is merged in his order, and there does survive only the record of the case before the Commissioner. For his argument he relies upon *Haji Mohammad Faruq v. The Collector General, Poonah Properties, New Delhi* (3), *Beharwal Shah Mirza v. The State of U. P.* (4) and *Commissioner of Patna v. Ibrahim Begum* (5). These cases turned on their own law, and are not helpful in the case here. If under section 57 the State Government could call for the record of any case decided by an inferior authority, the argument might have been attractive, but under the section the power of calling for the record is exercisable only in relation to a case in which an order granting or refusing permission has been passed and I have already said that an order of the Commissioner dismissing a revision against the order of the District Magistrate granting or refusing permission is not an order granting or refusing permission. On this view the question of merger of orders can scarcely be said to be genuine. Moreover the doctrine of merger, which applies to certain types of orders, does not extend to records. No authority has been shown in support of the proposition that the record of the case before the inferior authority also merges in the record of the case before the appellate or revising authority.

I am also not impressed by the argument that the reading for the record of a case is the condition for orders in the exercise of power under section 57. The argument assumes that 'may' means 'shall'. 'May' ordinarily means 'may' and should be read here as

(3) 111 I.L.J. 114. (4) 111 I.L.J. 114. (5) 111 I.L.J. 114.



'may.' The context and object of section 7F do not compel substitution of 'may' by 'shall.' 'May' is used twice in section 7F and it is not disputed that second time it is not used as 'shall.' The first 'may' is in my view also used in the same sense as the second one. The statute confers power on the State Government, it is an enabling provision like section 113 of the Code of Civil Procedure, and the State Government is not bound to exercise the power in all cases. The power is discretionary, and like all other discretionary powers its exercise may depend on the circumstances of each case. I am of the view that the first 'may' is used in a permissive and not mandatory sense.

Section 7F contemplates two stages. At the first stage the State Government has to take a tentative decision whether it should or not review the decision of the inferior authority, the second stage begins after it has decided tentatively in favour of reviewing the decision. Then it examines the pros and cons of the case, weighs the circumstances and facts for and against parties, considers the law, if material and then makes up its mind finally whether it is in the interests of justice to reverse the order of the inferior authority. Now, if the word 'may' is not used in a compulsory sense at the first stage, it is difficult to comprehend the logic of the argument that in the second stage it should be interpreted to have been used in a mandatory sense, that the record of a case must be sent for at this stage. It is either permissive or mandatory at both stages, it cannot be directory at one stage and mandatory at another stage. A word cannot, I think, have two meanings at the same place and at the same sentence. Further, the expression 'may call for the record of a case' has, I think, now become a term of art; to connote the removal or superintending nature of the power conferred on an authority as distinguished from the appellate power. I cannot recall

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 1. *State of Madras v. Sankaranarayanan*, 1955 Cr. L.J. 1000 (Madras).

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any instance of a law, and none has been cited before us, to bear the argument that the expression "is used to mean the actual reading for of the record of a case before exercising power." Indeed this Court has often disposed of reasons without reading for the record at all. If reading for the record were a condition precedent, it could not do so. And what this Court could have done should a justice be permitted to do: the State Government under similarly worded section 95. It is now well known that the growth and growth of administrative tribunals and authorities in modern times is traceable to the legislative desire of obtaining cheap and quick settlement of disputes, which is difficult in the common law courts, if not mainly on account of its costly and expensive, slow and expensive procedure. The procedure before administrative tribunals and authorities is characteristically simple, informal, flexible, and devoid of any technicalities. To say then that the reading for of the record of a case is the condition precedent to the passing of an order under section 95 is to overlook the character of the administrative process and thus is its characteristic feature without any clear legislative mandate.

In any view the reading for of the record is not the condition precedent to the passing of an order under section 95: the word "may" is used in the section in the permissive, and not in the mandatory sense.

The practical bearing of the distinction between a mandatory and permissive provision is only that that while the former must be strictly observed, the latter should be complied with substantially. If an order is made without substantial compliance with the permissive provision, and if prejudice has thereby been done to any person, the order may be avoided in the instance of that person. Thus if neither the record of

the city and the substance of the information contained in the record is placed before the State Government before it passed an order under section 7F, the person who is prejudiced thereby must invoke the aid of the court to avoid the order. But if he is not so prejudiced, he can have no just cause for complaint and the Court should decline to assist him. I am accordingly of the view that Latsch's case, wherein prejudice was assumed, was rightly decided. There the Court quashed the order under section 7F for some material on record was never examined by the State Government.

In *Richardson North Mire v. The State of U. S.* (1), [JOHN, J.] has taken a contrary view. In his opinion the standing for of the record of a case is the condition precedent to the valid making of an order under section 7F. With respect I am unable to share his opinion for the reasons that I have already stated. I express no opinion as to the correctness of the order on merits in that case. For my purpose it is enough that the facts of that case are radically different from the facts of the present case.

Assuming for argument's sake that the Additional Commissioner's record should also have been seen by the State Government before making the order, it is to be seen whether the failure to do so has caused any prejudice to the appellants. It is no longer in dispute that the entire record of the case before the Additional District Magistrate, the memorandum of revision and order of the Additional Commissioner were used by the State Government before making the impugned order. The only material, which formed part of the Additional Commissioner's record and was never placed before the State Government, consisted of four documents, which would show that the 4th respondent had

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been agreed from the House no. 17, S. C. Bora Road on the strength of a permission to use ground. In the Rent Control and Eviction Officer to the landlord because of his personal need for the house, and not because of the 4th respondent had asked for permission to use his the appellant's apartment from his house on the ground that a similar permission had been granted to the landlord of 17 S. C. Bora Road, which he was occupying as tenant. The Additional District Magistrate appears to have refused to grant him permission, because he thought that the 4th respondent, not having paid rent, was himself responsible for the order permitting his landlord to use for his apartment. He did not therefore take into consideration the circumstances that he was about to be evicted from 17, S. C. Bora Road. In response before the Additional Commissioner, the 4th respondent filed the said four documents to prove that he was not blameworthy and that permission was given to his landlord on the ground that the latter needed the accommodation for his own use. These documents, if they were before the State Government at the time of passing the impugned order, would, I think, have helped the 4th respondent, and not the appellants. Accordingly, I am of opinion that no prejudice has been caused to them by the omission of the State Government to send for the Additional Commissioner's record. They cannot therefore avoid the order of the State Government.

It was then argued on behalf of the appellants that the State Government illegally let in some new tenant regarding another house known as Sakinagar Bhasa and that its order is accordingly invalid. It is rather a technical objection, and cannot be accepted. I think that even if it does not defeat the State Government from considering new facts and circumstances before passing an order. Indeed sometimes it may be

is their duty to do so in the interests of justice. Further, no prejudice is shown to have been caused to the appellants.

Another argument is that the State Government has illegally refused to exercise the power of review which it undoubtedly has. When the State Government granted permission to the 4th respondents, the appellants applied for review. In letters, dated 1st May, 1935, they were informed that it was not possible to make any change in the order (but the permission seems amiable rather not). I do not think that this order can be construed to mean refusal to exercise the power of review. To my mind, it really means that the State Government, having recommended the matter, could not see its way to changing the order. In other words it has rejected the review application after considering the merits. If the State Government had taken the view that it had no power of review, it would have used instead of the word 'amiable' the word 'unable' or 'inadequate', which means power or capacity.

The last argument is that a writ for quare non can be entertained only with the permission of the District Magistrate and that the State Government has no power to grant such permission. I would express no opinion on this question, for I think that it should more properly be asked before the court which is asked of the suit for quare non appellations. It will be for that court to decide the question in the first instance.

Learned counsel for the 4th respondents said that the writ petition was liable to be dismissed for gross delay. The order of the State Government was made on 11th December 1933 and the writ petition was filed in Court on 14th May, 1935. This argument was not urged before the learned single Judge, who heard the petition on merits. I think it is now too late to raise the point. If the point had been raised before him,

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that appellants would have received an opportunity of producing evidence to explain the delay. If we now allow the point to be raised, it is likely to prejudice them. It may also be said that the job respondent waived this objection.

For the reasons stated above I would dismiss the appeal with cost.

MR. JUSTICE J. —I agree and do not have anything very useful to add.

DELLA, C.J.—I agree with my brother FRANKS that the State Government refused under section 7-F an order passed by the Additional District Magistrate and not the order passed by the Commissioner under section 9(3) refusing to serve it. The record of the case before the Additional District Magistrate was summoned by the State Government and the requirements of section 7-F was fulfilled. The permission to file a writ was refused by the Additional District Magistrate. It cannot be deemed to have been refused by the Commissioner even though he confirmed it. The power of section 7-F is to be exercised against an order refusing to grant permission for the filing of a writ and it was the Additional District Magistrate who refused it and not the Commissioner. The Commissioner's jurisdiction was to review the Additional District Magistrate's order if he found that he had acted (illegally, incorrectly, improperly or with irregularity. He did not act as an appellate court. Consequently the State Government was required, if at all, to seek for the record of the Additional District Magistrate's Court and not that of the Commissioner's.

There is no question of applying the doctrine of *stare decisis*. In the first place the Commissioner does not exercise powers as an appellate authority, his jurisdiction to interfere with the order is restricted to interference on the ground of acting (illegally or with

material irregularity or wrongful refusal to act. He has no jurisdiction to go into other matters and, therefore, when he finds that the District Magistrate did not act illegally or with material irregularity or did not wrongfully refuse to act, it cannot be said that the Additional District Magistrate's order merges in his order. I receive considerable support for my view from *Rational Did Mills v. Assistant Collector, Central District* (3) where it was laid down by Datta, C.J. that the doctrine of merger of orders cannot be applied to administrative orders. In *Dwarkanath v. Deputy Dist. Off.* I said that a permission on the basis of which a civil suit can take advantage of a res for judgment can be granted only by the District Magistrate. Unless there are two persons there cannot arise any question of merger. Consequently when a Commissioner refuses to interfere with the District Magistrate's order granting a permission, his order does not merge with the permission granted by the District Magistrate. Finally, as my learned brother has pointed out, the question is what records should be called for and not whether one order merges in another or not. Even though there may be a merger of one order with another there is no merger of the records in which the two orders are passed.

With great respect I do not think that any question of interpreting the word 'may' arises at all. The word 'may' used in the first instance cannot possibly mean 'shall'. The State Government cannot be forced to call for the record in every case decided by a Magistrate; the matter is at its discretion and the word 'may' was the only appropriate word that could be used. The objection of the appellants is not that the word 'may' means 'shall' but that the State Government cannot make an order unless it first calls for

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the record. What was argued is that the calling for the record was a condition precedent to the exercise of the power conferred by section 7 F and that the Government must call for the record in every case but that if it wants to exercise the power under section 7 F, it must. The contention was that either both the acts (of calling for the record and making an order) may be done or neither. I do not agree with that contention. Calling for the record is only a procedural step and not a condition precedent to the exercise of jurisdiction. The jurisdiction of the State Government to make an order is not derived from the calling for the record. Not calling for a record is only a procedural irregularity which is not fatal. Section 7 F only requires the record to be called for, it does not lay down what the Government should do if it does not receive it. The Government may not peruse it at all even though it receives it and yet may pass an order, which will be fully valid. If it can pass a valid order even without perusing the record, it does not stand to reason that it cannot pass a valid order without sending for the record.

Even if it be said that the calling for the record is a condition precedent to the making of an order, I am not bound to quash the order of the Government. If I find that no prejudice has been caused, I will be justified in refusing to quash it. It has not been explained how the appellants were prejudiced by the State Government not summoning the record of the Commissioner's Court. There was no matter required by the law to be considered by the Government before making an order and consequently it cannot be said that by not calling for the record it failed to consider a certain matter and thereby caused prejudice to the appellants. A Commissioner is not required to send for the record and if he can pass an order under section



y[4] without writing for the record of the District Magistrate's Court, it should not be held that the Government's passing an order under section 5F without calling for the record is prejudicial to the appellants. The Government before passing the order was in a better position to know the facts of the case than the appellants. The appellants had full opportunity of bringing to its notice any relevant matter that might have been on the record of the Commissioner's Court.

A suit has already been returned on the basis of the permission granted by the Government and even if we quash the permission, the case will go on and can be decided as held by the Court in *Devika Nath v. Gayatri Devi* (i). No useful purpose will, therefore, be served by our quashing the permission granted by the State Government.

The record should be developed with care.

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Before the Honorable M. C. Deen, Chief Justice and  
Mr. Justice Richards

**RESEARCH DESIGN AND METHODS**

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SUBDIVISIONAL OFFICER, CHENNAI  
AND OTHERS (Respondents)[illegible]

Sec. 10C. U. P. Penalties: Any Act or Omission of an Officer how in the manner of (a) knowing of an obvious person and the person to be defined as such person; (b) not the same as obvious or knowing the person to be the same person as one who told that such person is present on the person's own terms and usually, as may be necessary.

Rule 25 of the Rules issued under the Act provides that an affidavit sworn to in the trial of a criminal case under the provisions applicable under the Code of Civil Procedure is the best evidence.

It turns the processor on its ear and gives no acknowledgment for receipt of a Prichard parcel for an express order that the processor may not be removed from office of Prichard while it had been initiated and the charge may not be transferred from him the Sub-Chiefdom Officer unless the power be granted that he had no jurisdiction in any transfer of charge.

On a previous trial by the jury under Jev. 207 of the Code, copies of letters challenging the status of the Sub Divisional Officer were put up. In substance that he had the power to grant the relief under s. 150 and 151 of XXIV, Code of Civil Procedure and thereby that it had the power to do so under the provisions of limited powers.

Most, they say, the Code of Civil Procedure prescribes the procedure for the trial of suits, and the various various provisions prescribe upon the events during the same. Study 21 of the Code of Procedure has been made, and the provisions of the Code of Civil Procedure applicable to the hearing of election petitions which come up at the trial of suits. It does not appear

upon the Sub-Divisional Officer all the powers they are now vested upon a court by the Code of Civil Procedure.

The expression "proceedings applicable to the trial of suits" in Art. 22 does not include a power to issue an order of arrest in civil suits.

There is no necessary distinction between "proceedings of the civil kind and suits" (civil suits) and "suits" in the latter.

An order of arrest, being a purely summary proceeding applicable to suits, has, with powers as are conferred under s. 132, and G. S. 1880A, Code of Civil Procedure, can be exercised by an assistant divisional officer if they have been conferred upon it by a statute. There being no provision in the U. P. Provisions Act for conferring such powers on the Sub-Divisional Officer he could not exercise them.

The exercise of power of arrest in the police and in judicial matters would be considered necessary in the interests of justice. Importance of which, requires preservation of the best of possible powers for it or else, it will be available in an efficient manner in that it is not a court and therefore no court can exercise such powers. An efficient manner can give only such orders in the possession of the Act under which it is issued, provide for.

The principle of implied power which authorizes the doing of all things necessary for the enforcement of an order refers to the execution of an order already passed. It does not refer to a power to be exercised in anticipation of an order which may subsequently be passed. The power of the Sub-Divisional Officer is neither a warrant or decree the possession to be duly disposed does not mean that before such a declaration is made he can direct the possession to persons in order to remove the apprehensions from performing the duty.

The Sub-Divisional Officer consequently had no jurisdiction to say the transfer of charge pending the disposal of the election petition.

The petition was accordingly dismissed.

Costs dismissed.

Civil Miscellaneous Application no. 198 of 1918.  
Under Article 217 of the Constitution of India.

Sops Nath, Prithvi Nath, Jagdish Swarup and S. C. Khosla, for the applicant.

The Advocate-General (K. L. Mook), N. C. Upadhyay and S. P. Agrawal, for the opposite parties.

The judgment of the Court was delivered by—

BRENNER C. J.—This is a petition under Article 217 of the Constitution for the quashing of an order passed

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to appointing me a and for a directive to him to not transfer all the change of the office of Friedman to appointing me a and not to remove the personnel from the office of Friedman during the pendency of an election process that be run against the director of appointing me a is Friedman. On 4th May, 1981 we discussed the process and said that the reason for discussing it would be placed on record here. We now run the process for our order.

The petitioner was elected as President of a *Classe Indiv* in 1933. The next election for the office of President was held in December 1936, opposite party no. 1 and the petitioner contested the election and opposite-party no. 2 was declared elected. The petitioner filed an election petition in the court of opposite party no. 1 challenging the election of opposite party no. 2 on various grounds. He also applied to opposite-party no. 1 for not transferring the charge of the office from the petitioner to opposite-party no. 2 pending disposal of the election petition, but the opposite-party, no. 1, demanded his application on the ground that he had no jurisdiction to stay transfer of charge. It is the order of opposite-party no. 2 that the petitioner seeks through this petition to be quashed. When the Court allowed this petition it directed that until further orders the petitioner would not be removed from the office of President, with the consequence that the petitioner continued to hold the office of President till 26th May, 1940.

A *Profrat* of a *Gacil* *Señor* is elected by its members and his term commences on the date of the constitution of the *Gacil* *Profrat*, or on the date of his election, whichever is later, and expires with the term of the *Gacil* *Profrat*; said term is full of the *Profrat* *Señor*. The election of a person as *Profrat* cannot be called in question except by an application presented to the presiding authority on the ground that the





petition and the procedure to be followed at the hearing is to be prescribed by the State Government, and rule 23 contains the prescribed powers. The only power conferred upon him is to try the petition "in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits." All that is meant by rule 23 is that an election petition is to be tried as if it were a suit, i.e. that those provisions of the Code of Civil Procedure which relate only to the trial of suits will be followed in the sub-divisional office when hearing the petition. Through the Code of Civil Procedure lays down rules of procedure, it does more than laying down the procedure for the trial of suits it also confers various incidental powers upon the courts trying suits. Rule 23, however, applies only those provisions of the Code which relate to the trial of suits to the trial of election petitions; in other words it does not confer upon a sub-divisional officer all the powers that are conferred upon a Court by the Code of Civil Procedure. This is quite consistent with section 22(14) the State Government is competent to prescribe the powers only in respect of the hearing of an election petition and the procedure to be followed at the hearing.

Section 20 of the Representation of the People Act, 1951, is to the effect that every election petition "shall be tried by the Tribunal, in exactly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits", and section 20 is to the effect that—

"The Tribunal shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters:

(a) discovery and inspection,

(b) enforcing the attendance of witnesses,

etc.

1951  
Representation  
Act,  
Section  
20(14)  
Code of  
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Procedure,  
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Rule 23

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The fact that section 92 was enacted conferring certain powers in respect of the discovery and inspection and enforcing attendance of witnesses, etc., even though the Tribunal was already empowered by section 92 to do the discovery portion as if it were a suit, shows that the trial of the person did not include such matters as discovery and inspection, enforcing attendance of witnesses etc. The Code of Civil Procedure does not suit provisions in respect of the matters enumerated in section 92, and if the election tribunal had been covered by section 92(a) with all the powers conferred upon the courts by the Code of Civil Procedure, section 92 would have been wholly redundant. Section 92(a) should be interpreted as such a situation as to avoid redundancy or duplication as it must be interpreted to mean that the Tribunal is only authorized to take those steps for the trial of the person which a Court has to take for the trial of a suit. The steps that a Court has to take in the trial of a suit are: issuing the plaint, issuing notices to the defendant, receiving his written statement, examining the parties framing issues, receiving plaintiff's evidence, receiving defendant's evidence, hearing arguments and delivering the judgment. Section 92(a) means that an election tribunal has to take the same steps in the hearing of the person and nothing more. The Code of Civil Procedure makes a distinction between what is a step in the trial of a suit, i.e. what is included in the trial of a suit and what is not included in the trial of a suit. Even when a Court tries a suit it may also decide a case. For example, if while trying a suit it finds an agreement is essential to deciding a case, it is not a step in the suit because it does not advance the circumstances of the suit in any way. There are numerous instances dealing with section 103, which explain what proceedings taken under the Code would amount to a suit as distinct from the suit. It seems to us that





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 OF  
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 ELECTION PETITION  
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"1921" includes the various proceedings in the keeping of which such as the receipt of returns, statements and settlement of issues. Another contention that was advanced before the Supreme Court was that the granting of an amendment is not a matter of "procedure" but a matter of "power", and that since section 92 does not confer the power of allowing amendments upon the election tribunal, it has no power to allow an amendment. *Varadachari, Raja Achari, J.* did not at p. 454, dealing with the contention that we do not see any distinction between "procedure" in section 92(a) and "power" under section 92" has made it clear that an amendment is a procedural step and section 92(a) allows an election tribunal to amend pleadings. Allowing an amendment of pleadings may be a part of the trial of an election petition, but it does not follow that an order granting interim relief to the petitioner is a part of it. *Gowda, C.J.* observed in *Barman v. Yogendra Singh* (1) that

"It is difficult to make a distinction between procedure and the powers of a Court as suggested by Mr. *Pichaydhan*. The whole of the Civil Procedure Code as its very name implies deals with procedure. In the course of procedure the Court exercises extensive powers and when the Court is exercising its powers it is exercising them in order to carry out the procedure laid down in the Code. Therefore procedure and power in this sense are really interchangeable terms and it is difficult to draw a line between procedure and power. The power conferred under section 92 is not an substantive power, it is a procedural power, a power mandated for the purpose of carrying out the procedure before the Tribunal."

There also the learned Chief Justice deals with the power of an election tribunal to allow amendments

and held that the power was conferred by statute only. When the legislature itself distinguished between the power of trying a suit in accordance with certain provisions of the Code of Civil Procedure and the powers conferred by other provisions of it, it is difficult to agree with the above observations of the learned Chief Justice. The latest observation of the Supreme Court in *Malappuram District v. Sureshbabu Dhillon* (1), leaves the matter in no doubt. [RECOVERED] and in case you

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<sup>14</sup> It is clear from the above that the system now provided for the procedure for the trial of election petitions by the Tribunal. It provides for the examination of witnesses, the rules of evidence to be followed, the parties of candidates not already respondents as respondents and the examination or amplification of particulars of a corrupt practice already alleged in the petition. The powers of a Tribunal are, however, separately dealt with in article 84. It will be noticed that the new

It will be noted that the procedure lies first before the Tribunal and the powers of the Tribunal are treated separately thus distinguishing between the procedure to be followed by the Tribunal and the powers to be exercised by it. The effect of all these provisions really is to constitute a self-contained Code governing the trial of election petitions and it would appear that in spite of section 34(1) of the Act, the provisions of Order 11 of the Code of Civil Procedure would not be applicable to the trial of election petitions by the Tribunal."

Since the language used in rule 23, of the Pandeyan Raj Sutes is exactly similar to that used in section 40 (c) of the Representation of the People Act it must be interpreted in the same manner. The two provisions are *in pari materia*. It is immaterial if there is no rule



would be no delinquency in holding that it is a suit, within the meaning of Order XXIII, Rule 2. In *Jagan Nath v. Jagan Nath Singh* (i) the Supreme Court applied with it an election petition under the Representation of the People Act the provisions of Order I, rules 9, 10 and 11, which are applicable to suits. The observations in *K. Ramappa Nadar v. Kanya Thevar* (ii) that an election petition is not an action at law or a suit in equity but it is purely statutory proceeding unknown to the common law or that it is not a suit between two persons and is only a proceeding in which the contestants itself is the principal party interested, do not mean that even for the purpose of procedure at the trial of an election petition it is not to be treated as a suit notwithstanding the provisions of section 96(i) of the Representation of the People Act or of rule 13 of the Practice and Procedure Rules. In *Mallappa Swamy v. Basavaraj Appappa* (3), it was held by the Supreme Court that an election tribunal cannot allow a petitioner to withdraw or abandon a part of his claim in exercise of the power alleged to have been conferred by Order XXIII, rule 1, but it was so held, as already pointed out simply on the ground that the provision in Order XXIII, Rule 1, is not a provision relating to the trial of a suit and the special provisions contained in section 106, etc., render the power conferred by Order XXIII, rule 1, inapplicable. The real delinquent of *Shri Gopal Nath*, as was realised by himself later, was that the election petition was not acted as contract with opposite party as a fraud constituting an injury. There was no question of his committing a breach of contract, but it was sought to be made out that opposite party as a was not duly elected and that, by claiming to be duly elected he was causing an injury to the appellant. The claim of the appellants that he is being

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(i) A.C.B. 1971, 812, 813. (ii) 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025.



should declare, how can there be an election petition, if there is none elected? It is not of any consequence that section 148 does not use the words "declared elected"; there is no act other than that of declaring a person to elected which can amount to that of election and there is no date other than that on which the declaration is made which can be and so be the date of his election. A person gets rights from the moment of his being declared as elected. There is a formality attached to the act of declaration of election, and it is because it has a legal value, which cannot be other than that it brings into existence the election of a panchayat. Rule 148 requires the returning officer to report the declaration to the District Magistrate and inform the secretary of the panchayat. The limitation for filing an election petition runs from the date of the declaration. The constitution of a gram panchayat is dealt with in rule 148, as soon as at least two-thirds of the seats of members and the office of the panchayat have been filled up the District Magistrate must notify that the gram panchayat has been duly constituted. This means two things (i) that the notification by the District Magistrate itself amounts to constitution of the gram panchayat and (ii) that for the constitution of a gram panchayat the mere fact of election of a panchayat is required and not that his election has been held to be valid in an election petition. As soon as practicable after the constitution of a gram panchayat its panchayat must take the oath of office, vide rule 15. In all these provisions it is the fact of election, evidenced by the declaration of election, that is considered and not the upholding of the election as valid by an election tribunal. The term of a panchayat commences on the date of the constitution of the gram panchayat, it then commences even though the election of the panchayat has not been confirmed by an election tribunal and may even

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 Declaration  
 of  
 election  
 of  
 panchayat  
 members  
 by  
 District  
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right  
to continue  
in office,  
or  
the fact  
proves  
the non-  
existence  
thereof.  
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he is acting before it. If a prothon continues to act as such on the day of the declaration of his election, he cannot contend that the term will not end with the declaration of election of his successor but will continue so long as his successor's election is not confirmed by an election tribunal. The Act does not contemplate that a prothon's term should continue even after another prothonship has been constituted. The appellant's term expired long before he filed the election petition and he also ceased to hold the office on the day on which the opposite party no. 1 was declared elected. He has, therefore, absolutely no right left as prothon and there is no question of his being injured by opposite party no. 1's claiming to be a prothon. The election of opposite party no. 1 as prothon may be invalid and his claim that he is prothon may be untenable, but the appellant has no right whatsoever to remain in office as prothon. Under rule 164 he is bound to hand over charge of the office to the new prothon as soon as he takes the oath of office. If he wilfully neglects or makes a default in making over charge, it can be taken over through police help. The relief claimed by the appellant in the petition was that he may be declared as elected on the election of opposite party no. 1 to be set aside and a vacancy in the office be declared. There was no relief claimed on the basis of his being the sitting prothon, i.e. on the basis of his being elected as prothon in 1899. It means that he did not complain of any injury to him in his capacity as sitting prothon.

An election petition, though it is deemed to be a writ, cannot be said to be a writ for injunctive; as the writ is not to be said to be a writ for declaration with consequential relief in *Ger. Poudal v. Ramaswami Poudal* (1), a Bench of this Court granted temporary



injunctive in a suit for declaration that the plaintiffs were the directors of a company, and not the defendants. It was not disputed in that case that temporary injunction could be granted. Consequently that case is no authority for the proposition that an election petition is a petition for injunction. *Mohammed Ekram Khan v. Mirza Mohammed Ismail* (s) also is no authority because the suit there was expressly for injunction. We hold that neither is the election petition a petition for injunction nor are the opposite parties alleged to be committing any injury to the appellant which they might be restrained from committing. Reference to Order XXIX, rule 2, is, therefore, in vain.

Section 141, Civil Procedure Code, as is well known, does not confer any power upon a court but simply recognizes the existence in every court of the power to make such orders as may be necessary in the ends of justice or to prevent abuse of the process of court. Thus being the case, the appellant cannot contend that rule 25 confers upon an election tribunal the power of making such orders as may be necessary for these purposes. If section 141 does not confer this power upon a civil court, it certainly does not confer it upon an election tribunal. If an election tribunal can make orders for these purposes, it must be because it has the power just as any court has the power, i.e. because it has its own inherent power. We shall discuss that matter subsequently.

Coming to Order XLII, rule 3, Civil Procedure Code, we find that it does not apply in the present case because an election tribunal is not an appellate court, there is no decree to be reversed by it, the execution of which may be suspended during the hearing before it, and the rule does not relate to a trial of a suit. Further the essential condition for an order under Order XLII,

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rule 3, that substantial loss may result to the party applying for stay of execution unless the order is made, is not fulfilled in the protest may because, as already shown, the applicant has no right to be affected if opposite party no. 1 is not restrained from exercising his powers as *prothman*.

In the result we find that even if the sub-divisional officer has all the powers that are conferred by the Code of Civil Procedure he could not grant the interim relief sought for.

Mr. Gopal Singh next contended that the sub-divisional officer had the implied power to grant the interim relief; he said that the power was to be inferred from rule 19(g). The provision that he can declare a vacancy or declare the applicant to be duly elected in place of opposite party no. 1 does not mean that he can, before so declaring order opposite party no. 1 not to perform his duties as *prothman* and direct the applicant to remain in office as *prothman*. Such a reading of the provision of rule 19(g) would be against the various provisions already referred to, not the provisions that the applicant's term as *prothman*, expiring with the term of the *gaur panchayat*, that he could not remain in office after the election of opposite party no. 1, that opposite party no. 1 must take the oath of office at the place and time fixed for the purpose by the block development officer and that as soon as he takes the oath of office, the applicant must hand over charge of the office to him. It is not correct to say that rule 86 simply emphasises the form of oath; it also imposes the obligation upon the newly elected *prothman* to take the oath. If the block development officer fixes the place and the time for opposite party no. 1's taking the oath of office, the latter would be bound to do so. We do not think that in the absence of express provision the sub-divisional

officer had power to direct the black development officer not to fix the place and the time. It became the appellant's duty to hand over charge of the office to opposite party no. 2 on his taking the oath of office and it could not be assumed that the sub-divisional officer had the power to direct that the obligation imposed by rule 104 upon the appellant need not be discharged by him. To say that a certain provision of law need not be complied with would require an express provision of law. Under section 111 any member who refuses to take the oath of office shall be deemed to have vacated the office forthwith; this automatic effect of the failure to take the oath negates the power to the sub-divisional officer to direct that opposite party no. 2 need not take the oath i.e. that no adverse consequence will follow if he does not take it. Opposite party no. 2 became a practising since he was declared elected by the returning officer; he had to do so not after the declaration (in order to become a practising). After becoming a practising he has only to perform his duties and he can be prevented, if at all, only from performing them. But that would not have the effect of enabling the appellant to perform them, whether opposite party no. 2 is allowed or not to perform them, the appellant cannot perform them at all.

If appellate party no. 2 could be prevented from performing his duties as guardian and the appellant also could not perform them, it would mean that there will be nobody to perform the duties such a situation is not contemplated by the Act or the Rules. The work of the non-guardians must come to a standstill.

See *Quip*. Mark referred us to the statement on p. H. L. E. paragraph 42, to the effect that an authority given by a master to do certain work authorizes the doing not only of all things absolutely necessary for its execution but also of all things reasonably necessary.

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THE  
SOUTHERN  
COTTON  
PLANTING  
CO., INC.,  
PLAINTIFFS,  
v.  
J. M. DUBOIS,  
DEFENDANT.

and also in *Maitrey Dabry v. H. C. Bhatt* (3), where Chief-Justice Acheson, J. observed at page 296:

"Where a power is conferred or duty imposed by statute or otherwise, and there is nothing said expressly inhibiting the exercise of that power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it a power of doing all such acts or employing such means as are reasonably necessary for such execution."

There are the powers in respect of execution of the orders already passed and not powers to be exercised in anticipation of passing of orders. The sub-divisional officer may have an implied power to do so as an order to implement the first order that he passes to the election person, but it does not mean that he has an implied power to pass an order even before he finally decides. Implied power must be reasonably necessary and must not be derogated to the other provisions of the statute. There is no necessity whatsoever of implying any power to the sub-divisional officer to prevent the transfer of the charge from the appellant to opposite party no. 2. The appellant, as explained earlier, has absolutely no right which needed protection during the pendency of the writ petition. If the election process proceeds, whether he is declared elected or a vacancy is declared, there will be no difficulty in implementing the order. If the appellant is declared elected he can take back charge of the office from opposite party no. 2 and if a vacancy is declared an election will take place and whoever is declared elected will take charge of the office from opposite party no. 2. There is no necessity of protecting opposite party no. 2 from interfering his duties during the pendency of the election petition. They must be performed and there cannot be

performed by anybody except him. We, therefore, as per the claim of Sen Gopal Nath that the sub-divisional office has implied power to arrest the inmates asked

32. *Supra* 2004's last entry was to the inherent power. The inherent power are of a court and we do not accept that an election tribunal is a court. Merely because it records evidence, hears parties and decides on the disputes between them it does not become a court, which is invested with the power of making any order that is considered necessary in the interest of justice or to prevent abuse of the process of court. Courts derive authority from the Crown, but election tribunals do not and there is no question of their doing justice regardless of rules of procedure. They are created by the statute to decide certain disputes and are bound to decide them strictly according to law after following the prescribed procedure and have jurisdiction to do only what they are expressly empowered to do. Only those courts which have the general jurisdiction to do justice are competent to pass any orders that they consider necessary in the interest of justice, even though they are not covered by express provisions of the laws of procedure. We have already referred to *E. Ramappa Nadar v. Kanya Thero* (1) and *Madappa Ramappa v. Ramaray Appappa*, (2) which explain the nature of election tribunals. In the former case it was observed that an election tribunal possesses no common law power. In *Norma Chander Ray Choudhary v. Shambhooji Debnath* (3), Prayers, C. J. observed that "it is the duty of the Judge to apply the law not only to what appears to be regulated by their express dispositions, but to all the cases to which a just application of them may be made and which appear to be comprehended either within the express terms of the law, or within the construction that may be extracted from it". *Munim*

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I observed in *Nurjaghu Khan v. Muzafar Durrani*, (1) with reference to the Civil Procedure Code that the Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code; but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. The same view was taken in *Ali Jahan Khan v. Ali Yar Khan* (2). We do not think any of these authorities helps the appellants at all. Even if the sub-divisional officer is a court charged with the duty of seeing that justice is done, he has only to see that justice is being done. The granting of the interim relief is not essential for doing justice to the appellants; it is not justice to give him a relief to which he is not entitled or to prevent another person from exercising his right merely because it is challenged. As was pointed out by one of us in *O. P. v. Mushtaq Singh* (3), it is not just to stop execution of an order merely because it is appealed from and that justice lies in allowing it to be executed so long as it is not set aside. It would be an act of injustice to inter-appoint parties, so, it is not elected even though he has been declared elected and it would further be an act of injustice to let the appellants, whose term has expired and who is left with no right on account of his election as praesens in 1955 and who was defeated in the next election, function as praesens. There would be absolute and deliberate in giving effect to whatever order is passed by the sub-divisional officer in the election revision. There is absolutely no question of preventing closure of the process of court. The appellants do not challenge the termination of his office as praesens when he challenges the election of opposite party (4). The interim relief has no connection with the re-

(1) 1955 P.L.D. 1, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

but sought as the election petition, and even a court has no inherent power to grant an interim relief not connected with the relief sought in the suit. The applicant's locus in the election petition is either that of a defeated candidate or that of an elector but not that of an elector. Therefore no interim relief can be granted to him in an election petition. It is not correct that he acts in the election petition the removal of a candidate by his right; he has no right whatsoever until the sub-divisional officer declares him elected. Even if the election of opposite party no. 2 is voided or void, no vacancy arises so long as it is not declared void by the sub-divisional officer. There is, therefore, no vacancy at present. The charge of office must be taken from the applicant even though there may be no duly elected person. It can be taken by the applicant or by a provincial inspector. The absence of a duly elected person would be no justification for not taking over charge from the applicant.

In *Pratapsingh v. Sada Ayyar* (1), it was held that an election tribunal has no inherent power.

We are not impressed with the argument advanced in a memorial petition by Mr C. B. P. Singh, that if the newly elected person is allowed to take charge, the sitting person, who challenges his election, may be handicapped in producing evidence before the tribunal. The argument is that the newly elected person, who is charged by rule 47 (c) with the maintenance of various registers, may destroy the evidence and the sub-divisional officer would be powerless in the matter. The argument runs both ways, and moreover there is no such plea taken in any of the petitions for interim relief.

We therefore, hold that the sub-divisional officer has no inherent power also to grant the interim relief.

1954  
A. I. R. 1954, 334 (22)  
Pratapsingh v. Sada Ayyar  
1954, 334 (22)  
Pratapsingh v. Sada Ayyar  
1954, 334 (22)





## (FULL BENCH) APPELLATE CIVIL.

—

Before the Honourable M. C. Doss, Chief Justice  
Mr Justice Mukherji and Mr Justice Dasgupta

BYDDHAN SINGH and ANOTHER (Defendants)

v

1911  
—  
1912, 13

NADE BUX and ANOTHER (Plaintiffs)

**United Provinces Tenancy Act and Uttar Pradesh Revenue Regulation and Land Revenue Act, 1894, s. 5.**—Demand for entry possession over the said constructions in which some small stones were removed from village—On return issued against decree for possession—Before possession is entered U. P. Revenue Regulation and Land Revenue Act came into force—Held, when in the last Government in force legal under s. 5 of the Act—The term "belonging to or held by, or in, or employed"—Whether possession must have legal origin.

*A* is the owner of *B* who is the tenant. *A* has some constructions over the site of which he is the owner. Demand of the revenue authorities *A* left the village and *B* entered possession over the site, situated s. 5 of his own demised and demolished the constructions. *B* made certain constructions of his own at the site of his. On a suit by *A* against *B* for possession over the site, he got over the case to the conclusion that *A* had left the village only temporarily with the intention of returning to the village and *B* had no right to enter into possession. The suit was decreed for possession over the site. *B* appealed and during the pendency of the appeal the Uttar Pradesh Revenue Regulation and Land Revenue Act came into force. *B*, however, did not have his site in any possession of the Act. On appeal of the case the Judge dismissed the appeal and the decree in favour of *A* was confirmed.

In Second Appeal filed by *B* the contention is that on 1st July, 1911, while the Uttar Pradesh Revenue Regulation and Land Revenue Act came into force *B* and not *A* was in possession of the constructions as well as of the site in use and in view of s. 5 of the Act the lower appellate court could not give a decree in favour of *A*.

[Per Mukherji and Dossan, JJ. Doss, C. J. dissents.]

Under s. 5 the word "held" did not require a title of a proprietor but that a person had a legal right to a site. A person who occupied the site of another and constructed a building on that land of the other, did not by that



were signs in village Nagh Abdullak a brother of village  
 Muchai, that the use of the house had been taken by  
 their father from the defendants' ancestors some 30  
 years ago and that thereafter the plaintiffs made a fire  
 hut on the site for their residential purposes. The  
 plaintiffs further alleged that during the communal  
 disturbances of 1947 and 1948, they left the village  
 temporarily for the purposes of security and lived with  
 their relations in another village, then when conditions  
 improved and security was restored in Nagh Abdullak  
 they returned to it but found that their house had  
 been unlawfully taken over by the defendants and not  
 only that the defendants had demolished the plaintiffs'  
 construction but they had also included the land in  
 their own house.

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The defence that was taken to the suit was that the  
 site in dispute had been given to Huseini some 15 years  
 ago on rent which was received in kind and that  
 Huseini had subsequently abandoned his tenancy and  
 therefore the site reverted to the appellants as Zamindars  
 and that they had since possession of the site as such.

The trial court held that the site had been included  
 in the residential house of the defendants and that the  
 defendants had not abandoned the same by leaving the  
 village. The lower appellate court also held that the  
 land in suit had the residential structures of the plain-  
 tiffs on it. The lower appellate court accepted the  
 case of the plaintiffs to the effect that they were rayers  
 and they possessed the site as such and that they had on  
 the site their residential houses. From the decision of  
 the lower appellate court, it is clear that the courts  
 were which originally went on that site were not sub-  
 sistent constructions, but they were in a dilapidated  
 condition. The lower appellate court affirmed the find-  
 ings of the trial court to the effect that the plaintiffs did  
 not abandon the site and that they did not abandon

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the village, for it found that they left the village with the intention of returning back to it.

The appellate court affirmed the decision of the trial Court and dismissed the appeal, which avers that the plaintiffs had a desire to their former for actual possession of the property described in the form of the plan.

In this second appeal, it was contended that as the findings arrived at by the courts below, the plaintiffs are could not be deemed because of the provisions of section 3 of the U. S. Constitution. Abolition and Land Reform Act, 1947. Before turning to consider the effect of section 3 on this case, it would be useful to restate the main findings on which the judgment in respect of section 3 was founded. The findings which need reiteration are:

(1) That the site was held by the plaintiffs at one stage as *ruyas* and that on that site stood certain, *Archie* constructions which were not in very good repair at the time when the plaintiffs temporarily left the village.

(2) That the plaintiffs did not abandon the village but that only, temporarily, left the village with the idea of coming back to it when conditions in the village became settled and safe for them.

(3) That during the absence of the plaintiffs from the village, the defendants who were their neighbors—having been formerly *Pamanday*—took possession of the constructions that stood on the site and the site as well and that after having taken possession thereof they demolished the dilapidated *Archie* constructions and included the site in their own residential house.

Section 3 is in these words:

"All rights over land, and all buildings on land within the limits of an estate, belonging to or held by an intermediary or tenant or other person

whether residing in the village or not, shall continue to belong to or be held by each intermediary, tenant or person to the use may be used for the use of the village or the buildings with the area appurtenant thereto shall be deemed to be sealed with intent by the local Government on such terms and conditions as may be prescribed."

On behalf of the appellants it was contended that the use in respect of which there was a dispute was, as set out in the appellants in the buildings both "belonging to" and "held" by the defendants. On behalf of the respondents, it was contended in reply that the land in dispute could not be said to "belong to" or "be held" by the defendants because the land had been taken by the plaintiffs lawfully from the respondents and that the plaintiffs had raised certain constructions on that land and that the plaintiffs never abandoned either the constructions or the land which could give the intermediary defendants the right to appropriate the land and the constructions thereon for their own benefit lawfully or to include the same in their own property. The solution to the controversy raised would depend upon whether the words "belonging to" in section 9 and the word "held" in that section require that there should be a lawful basis for claiming the property as for holding the property, that is to say, whether section 9 requires a legal basis for the use situation which are visualized under that section in respect of buildings and the use on which such buildings stand.

There has been a difference of opinion in this Court as to the true meaning of section 9, and that was the reason why the case was referred to a Full Bench. In *Pinder Chander v. Mervat Chander* [1] *Agarwala and Chatterjee* [2] held that section 9 of the U. P. Land Revenue Abolition and Land Reforms Act did not confer any right on persons having no title in

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"held" a piece of land and that it was confined to 44,175/21  
 acres as a case where the building on one disputed lot,  
 was lawfully held by the person in possession. The  
 former expressed the view that the word "held" in  
 section 9 referred to the existence of such possession  
 as could be traced to a lawful origin. In *Barrow's*  
 [18 *Admiral Singh* (1), *Barrow* and *Toussaint*, JJ.] held that  
 there was nothing in the language of section 9 of the  
 E. P. Enclosure Act, 1845, and Lord Melville's An-  
 nouncement could suggest that the use of a building could  
 be settled with an intermediary, tenant or other person  
 other than of whom was a lawful owner of it or holder  
 lawfully. These learned judges were of the opinion  
 that the language used by the Legislature in section 9  
 was so wide as to include the claim of a tenant  
 or also, but the learned judges expressed the view  
 that in this a respondent introduced a building as  
 a way then the building and the use would be settled  
 as to be settled with the tenant and not with the owner  
 of the use they held that the building would be deemed  
 as to be settled with an intermediary user of the building  
 belonged to him and not otherwise.

The word "held" has not been defined in the Act,  
 nor do we find any definition of the word in any of  
 the Acts which could be said to be in pari materia or  
 assist in determining the meaning of this word with  
 any amount of certainty, so that we have to revert to  
 the dictionary for its meaning.

Webster's New Tenthred Century Dictionary  
 (Second Edition) giving the meaning of the word  
 "held" has this to say:

"to have, (a) to decide, adjudged, decree,

(b) to hold in contract,

(c) to possess by legal title as,

"who holds the mortgage?"

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<sup>a</sup> 1998–1999. <sup>b</sup> 2000–2001. <sup>c</sup> 2001–2002. <sup>d</sup> 2002–2003. <sup>e</sup> 2003–2004. <sup>f</sup> 2004–2005. <sup>g</sup> 2005–2006. <sup>h</sup> 2006–2007. <sup>i</sup> 2007–2008. <sup>j</sup> 2008–2009. <sup>k</sup> 2009–2010. <sup>l</sup> 2010–2011. <sup>m</sup> 2011–2012. <sup>n</sup> 2012–2013. <sup>o</sup> 2013–2014. <sup>p</sup> 2014–2015. <sup>q</sup> 2015–2016. <sup>r</sup> 2016–2017. <sup>s</sup> 2017–2018. <sup>t</sup> 2018–2019. <sup>u</sup> 2019–2020. <sup>v</sup> 2020–2021. <sup>w</sup> 2021–2022. <sup>x</sup> 2022–2023. <sup>y</sup> 2023–2024. <sup>z</sup> 2024–2025. <sup>aa</sup> 2025–2026. <sup>ab</sup> 2026–2027. <sup>ac</sup> 2027–2028. <sup>ad</sup> 2028–2029. <sup>ae</sup> 2029–2030. <sup>af</sup> 2030–2031. <sup>ag</sup> 2031–2032. <sup>ah</sup> 2032–2033. <sup>ai</sup> 2033–2034. <sup>aj</sup> 2034–2035. <sup>ak</sup> 2035–2036. <sup>al</sup> 2036–2037. <sup>am</sup> 2037–2038. <sup>an</sup> 2038–2039. <sup>ao</sup> 2039–2040. <sup>ap</sup> 2040–2041. <sup>aq</sup> 2041–2042. <sup>ar</sup> 2042–2043. <sup>as</sup> 2043–2044. <sup>at</sup> 2044–2045. <sup>au</sup> 2045–2046. <sup>av</sup> 2046–2047. <sup>aw</sup> 2047–2048. <sup>ax</sup> 2048–2049. <sup>ay</sup> 2049–2050. <sup>az</sup> 2050–2051. <sup>ba</sup> 2051–2052. <sup>bb</sup> 2052–2053. <sup>bc</sup> 2053–2054. <sup>bd</sup> 2054–2055. <sup>be</sup> 2055–2056. <sup>bf</sup> 2056–2057. <sup>bg</sup> 2057–2058. <sup>bh</sup> 2058–2059. <sup>bi</sup> 2059–2060. <sup>bj</sup> 2060–2061. <sup>bk</sup> 2061–2062. <sup>bl</sup> 2062–2063. <sup>bm</sup> 2063–2064. <sup>bn</sup> 2064–2065. <sup>bo</sup> 2065–2066. <sup>bp</sup> 2066–2067. <sup>bq</sup> 2067–2068. <sup>br</sup> 2068–2069. <sup>bs</sup> 2069–2070. <sup>bt</sup> 2070–2071. <sup>bu</sup> 2071–2072. <sup>bv</sup> 2072–2073. <sup>bw</sup> 2073–2074. <sup>bx</sup> 2074–2075. <sup>by</sup> 2075–2076. <sup>bz</sup> 2076–2077. <sup>ca</sup> 2077–2078. <sup>cb</sup> 2078–2079. <sup>cc</sup> 2079–2080. <sup>cd</sup> 2080–2081. <sup>ce</sup> 2081–2082. <sup>cf</sup> 2082–2083. <sup>cg</sup> 2083–2084. <sup>ch</sup> 2084–2085. <sup>ci</sup> 2085–2086. <sup>cj</sup> 2086–2087. <sup>ck</sup> 2087–2088. <sup>cl</sup> 2088–2089. <sup>cm</sup> 2089–2090. <sup>cn</sup> 2090–2091. <sup>co</sup> 2091–2092. <sup>cp</sup> 2092–2093. <sup>cq</sup> 2093–2094. <sup>cr</sup> 2094–2095. <sup>cs</sup> 2095–2096. <sup>ct</sup> 2096–2097. <sup>cu</sup> 2097–2098. <sup>cv</sup> 2098–2099. <sup>cw</sup> 2099–2100. <sup>cx</sup> 2100–2101. <sup>cy</sup> 2101–2102. <sup>cz</sup> 2102–2103. <sup>da</sup> 2103–2104. <sup>db</sup> 2104–2105. <sup>dc</sup> 2105–2106. <sup>dd</sup> 2106–2107. <sup>de</sup> 2107–2108. <sup>df</sup> 2108–2109. <sup>dg</sup> 2109–2110. <sup>dh</sup> 2110–2111. <sup>di</sup> 2111–2112. <sup>dj</sup> 2112–2113. <sup>dk</sup> 2113–2114. <sup>dl</sup> 2114–2115. <sup>dm</sup> 2115–2116. <sup>dn</sup> 2116–2117. <sup>do</sup> 2117–2118. <sup>dp</sup> 2118–2119. <sup>dq</sup> 2119–2120. <sup>dr</sup> 2120–2121. <sup>ds</sup> 2121–2122. <sup>dt</sup> 2122–2123. <sup>du</sup> 2123–2124. <sup>dv</sup> 2124–2125. <sup>dw</sup> 2125–2126. <sup>dx</sup> 2126–2127. <sup>dy</sup> 2127–2128. <sup>dz</sup> 2128–2129. <sup>ea</sup> 2129–2130. <sup>eb</sup> 2130–2131. <sup>ec</sup> 2131–2132. <sup>ed</sup> 2132–2133. <sup>ee</sup> 2133–2134. <sup>ef</sup> 2134–2135. <sup>eg</sup> 2135–2136. <sup>eh</sup> 2136–2137. <sup>ei</sup> 2137–2138. <sup>ej</sup> 2138–2139. <sup>ek</sup> 2139–2140. <sup>el</sup> 2140–2141. <sup>em</sup> 2141–2142. <sup>en</sup> 2142–2143. <sup>eo</sup> 2143–2144. <sup>ep</sup> 2144–2145. <sup>eq</sup> 2145–2146. <sup>er</sup> 2146–2147. <sup>es</sup> 2147–2148. <sup>et</sup> 2148–2149. <sup>eu</sup> 2149–2150. <sup>ev</sup> 2150–2151. <sup>ew</sup> 2151–2152. <sup>ex</sup> 2152–2153. <sup>ey</sup> 2153–2154. <sup>ez</sup> 2154–2155. <sup>fa</sup> 2155–2156. <sup>fb</sup> 2156–2157. <sup>fc</sup> 2157–2158. <sup>fd</sup> 2158–2159. <sup>fe</sup> 2159–2160. <sup>ff</sup> 2160–2161. <sup>fg</sup> 2161–2162. <sup>fh</sup> 2162–2163. <sup>fi</sup> 2163–2164. <sup>fj</sup> 2164–2165. <sup>fk</sup> 2165–2166. <sup>fl</sup> 2166–2167. <sup>fm</sup> 2167–2168. <sup>fn</sup> 2168–2169. <sup>fo</sup> 2169–2170. <sup>fp</sup> 2170–2171. <sup>fq</sup> 2171–2172. <sup>fr</sup> 2172–2173. <sup>fs</sup> 2173–2174. <sup>ft</sup> 2174–2175. <sup>fu</sup> 2175–2176. <sup>fv</sup> 2176–2177. <sup>fw</sup> 2177–2178. <sup>fx</sup> 2178–2179. <sup>fy</sup> 2179–2180. <sup>fz</sup> 2180–2181. <sup>ga</sup> 2181–2182. <sup>gb</sup> 2182–2183. <sup>gc</sup> 2183–2184. <sup>gd</sup> 2184–2185. <sup>ge</sup> 2185–2186. <sup>gf</sup> 2186–2187. <sup>gg</sup> 2187–2188. <sup>gh</sup> 2188–2189. <sup>gi</sup> 2189–2190. <sup>gj</sup> 2190–2191. <sup>gk</sup> 2191–2192. <sup>gl</sup> 2192–2193. <sup>gm</sup> 2193–2194. <sup>gn</sup> 2194–2195. <sup>go</sup> 2195–2196. <sup>gp</sup> 2196–2197. <sup>gq</sup> 2197–2198. <sup>gr</sup> 2198–2199. <sup>gs</sup> 2199–2200. <sup>gt</sup> 2200–2201. <sup>gu</sup> 2201–2202. <sup>gv</sup> 2202–2203. <sup>gw</sup> 2203–2204. <sup>gx</sup> 2204–2205. <sup>gy</sup> 2205–2206. <sup>gz</sup> 2206–2207. <sup>ha</sup> 2207–2208. <sup>hb</sup> 2208–2209. <sup>hc</sup> 2209–2210. <sup>hd</sup> 2210–2211. <sup>he</sup> 2211–2212. <sup>hf</sup> 2212–2213. <sup>hg</sup> 2213–2214. <sup>hh</sup> 2214–2215. <sup>hi</sup> 2215–2216. <sup>hj</sup> 2216–2217. <sup>hk</sup> 2217–2218. <sup>hl</sup> 2218–2219. <sup>hm</sup> 2219–2220. <sup>hn</sup> 2220–2221. <sup>ho</sup> 2221–2222. <sup>hp</sup> 2222–2223. <sup>hq</sup> 2223–2224. <sup>hr</sup> 2224–2225. <sup>hs</sup> 2225–2226. <sup>ht</sup> 2226–2227. <sup>hu</sup>

Mean. A technical word in a deed signifying that the donor has done what expresses the grant in itself, the grantee is to have the land. The clause which commences with these words is called the *introduction*. (*Introdūctum* was that part of a deed which was formerly used in expressing the sense by which the action granted was held, but since all freehold estates were converted into lease, the *introduction* is of no further use even in England, and is therefore, joined to the *habendum* in this manner,—to have and to hold. The words "to hold" have now no meaning in our deeds. According to Bouvier: "a very frequent use that *habendum* is that clause which usually follows the granting part of the premises of a deed, which defines the extent of the conveyance in the thing granted to be held and enjoyed by grantee." The original words of "*habendum* of freeholds" are "to have and to hold."

Source: <http://www.bls.gov>

To decide its design, to decide — as the court in *First Nat'l Bank* held — that the husband was not liable for the contract of the wife made without her consent or implied authority.

is based under a contract as the obligor is held  
and family board.

Verba Judicial Dictionary, Volume 2 (1933), Third  
 Edition, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611

There is a marked difference between a bold man and an overbearing person. A person may be bold though he does not overstep his limits. A person who holds back of another, he does not overstep his limits.

In very old English manuscripts, representing the initials of *Beowulf* as *G* or *W* so it was painted and

**Abstract**

that under that Act a holding was "held" and land was "enjoyed".

In the *King* against the *Debtors* of *Stow* *Barclay* (c) a distinction seems to have been drawn between holding and possessing, but that was no respect of the Statute mentioned above. In *Williams v. Phillips* (a), while considering the question as to the nature of right that a plaintiff was entitled to under the words of the Statute 4 and 5 Vict. c. 108, Lord Justice Coleridge said:

"The plaintiff claims to be entitled to the allotments under the words of the statute and under the words of the lease. We must first ascertain what the facts are, and then see how the words of the lease are to be construed. Up to the year 1837 certain rights of common attached to Wicks Farm, entered over a common called *Blissman's Common*. In 1837, by an order made under the Inclosure Act, the rights of common were extinguished but the right so an allotment was created instead of it. I need not read the words of the lease. After the order had been made no rights of common attached to the farm entered over the land to be inclosed but in substitution for the rights of common a right to an allotment was created which was given to the owner of the farm. I do not think that the words of the lease comprise the right to the allotment. It was not a right 'belonging' to the farm, it was not 'usually held or enjoyed with the farm.' Finally by the words the allotments might have been included in the inclosure, but they do not exist here and it would be a little strange if a lease in a closed area were to include the right to allotments, which might not be finally set out for an indefinite number of years . . ."

(c) *Reported* 10 L. Rep. 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.



As I pointed out earlier, the word "hold" or "held" had not been defined anywhere and that we had no clue as to the dictionary meaning of the word, and if necessary modify that meaning or add to that meaning according to any particular interpretation that has since been given to these words.

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Webster's New Tenth Century Dictionary Judicial Dictionary, Vol. 2 (First Edition) at page "hold" means to possess by legal title. Stated in his Judicial Dictionary, Vol. 2 (Third Edition) at page 1381 (I have already quoted this earlier) was that there was a material difference between "holding" and "occupation." If there was a material difference then "hold" could only appropriately refer to the title which entitled the person to occupy, for as pointed out by "Second, a person may "hold" and yet not be "occupy."

The observations of Lord Justice Goff in the case, *Williams (1)*, quoted by the author also indicated that the words "belonging to" and "held" did refer to a legal right.

In *Phelan v. Chas. (2)* where a Bench of the Court said that they found it difficult to understand why the Legislature should have preferred a trespass over a right of way, they in effect expressed the view that the word "hold" connoted the existence of a right or title in the holder and as did the words "belonging to." Nothing was properly held to a person who does not own the thing whether it be land, building or chattel, though it is in a certain sense possible for a person to hold a thing in the sense of having possession of the thing even though he was not the owner thereof. Nevertheless, it could not be said that the word "hold" or "held" could not or should not refer to a legal holding.

It is well recognized that if a word is capable of being understood in a narrow as also a broad sense then one



on the date immediately preceding the day of trespass should be deemed to be settled by the State Commission with such intermediaries.

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Section 14.112 used the word "held" and not "deemed to be in bona fide held". It cannot be said that the word "held" in the section could apply to a trespasser.

Section 14.112 contemplates rights in respect of land arising out of two clear cut situations: (i) where the rights are taken out of legal origin, and (ii) where the rights are taken in favour of a trespasser merely by his being in possession of the land. To us, read the use of the word "occupied" in subsection (b) of section 14 clearly indicates that the Legislature when it used the word "held" did not intend to give the word a meaning that could embrace in it, under a trespasser.

In the case of *Shivast* (15) the parties were as pointed out in the previous head as page 744 column 1 that the defendants intermediaries had admittedly lost actual possession in July, 1943 and then on the date of writing, he had neither any title nor was he in possession, nor had he any right to possess the land. Under the circumstances the question which we have to determine stands whether the word held in section 14 related to legal origin or not did not specifically relate to bona fide relations. The learned judges in *Shivast*'s case further pointed out that the respondents of this appeal could not show any title better than the appellants that they had remained in peaceful possession for a year or more. The learned judge further observed that

"There is no dispute about the facts that the respondents themselves does not claim that it belongs to him. Since the building is situated within the limits of the estate, under section 4 of the 1943 Ordinance with the area opportunities should must be deemed to be settled with the appellants by the State

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GOVERNMENT. The appellants now say in their possession of the site of the building on account of the settlement, and are not liable to repayment. They might have been liable to be ejected as trespassers before the vesting but as consequence of the vesting their possession on the site is to be deemed as the result of the settlement with the State Government in whom the land vests."

The learned judge in *Blount Singh's case* (i) defined the term expressed in *Phulu Chamar's case* (x) as it appears to me, namely, on the ground that that thought, that by giving the meaning which the Bench had given to the word 'held' the Bench had in effect imported the word 'lawful' into the section. With great respect to the learned judge, I do not think that in *Phulu Chamar's case* (x) any such attempt had been made by the learned judge.

In this connection, it may be useful to always to what has been said by Mr. Justice FORTESCUE in *United States of America v William S. Mann* (y) FORTESCUE, J., clearly pointed out that one could not claim that one's eyes go everything else except the naked words of an Act. The learned judge warned against the pernicious effect which is liable to arise from simple mistake in interpretation. As FORTESCUE, J. pointed out "a statute, like other living organisms, defines application and occurrence from its environment, that which it cannot be served without being mutilated." In my view, it would be mutilation of the meaning and the intent of the Legislature to give meaning to the word 'held' and the words 'belonging to' in section 5 of the U. P. Zamindari Abolition and Land Reforms Act as has given in the *Phulu's case* (x). It should not be forgotten that a man can unlawfully occupy or even

(x) AIR 1941 PC 102.

(y) 107 F. 282, 324, 325, 326.

possess something, but strictly speaking, no legal person, at any rate, he cannot unlawfully hold anything for which applies to the expression "belonging to".

It is well recognized that, even though, when we asked "the doctrine of separable construction" is no more relied upon by Courts, even so, it is perfectly clear that even now it is well entrenched in law that giving a liberal or a strict construction to sections must be in accordance with certain principles. It is further well recognized that in interpreting a legislative enactment, Courts presume, without doubt, that a legislature performs its functions properly and that the legislature has in its ultimate view the enactment of laws founded on recognized concepts of justice, commonness and reason, all of which operate to control the legislature in performance of its law-making function" (1). It is well recognized that civilized society is founded upon certain standards of ethical conduct, and that in a democracy, laws must harmonize with the general sense and morality of the people. It has been pointed out by Crawford in his book on Statutory Construction at page 299 that—

"It must be assumed that the lawmakers who represent the people, enact all laws in the light of what the people believe is honest, fair and equitable and in harmony with the public welfare. In other words, the entire legislative process is influenced by considerations of justice and reason. Justice and reason pervade the great general legislative intent in every piece of legislation. Consequently, when the statute as a suggested construction appears harsh, unreasonable, or in any other manner contrary to prevailing conceptions of justice and reason, in such instance, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the lawmakers. In the absence of some other indication that the

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holder did not constitute a title of a trespasser, but that it referred to a title that had a legal origin. A person who trespassed on the land of another and constructed a building on that land of the other, did not by that trespass, unless the right of the owner was harmed by the law of limitation, acquire under the provisions of section 9 of the U. P. Zamindari Abolition and Land Reforms Act any title, right or interest to maintain the building on that land or to have acquired any interest in that land. In my opinion, therefore, that appeal which is by the appellants must be dismissed.

Division J.—I agree with the opinion of Division J. who has been good enough to send me an advance copy of his judgment. In view of the importance of the questions raised in this case, I would however prefer to state briefly my own reasons for our view.

The facts of the case have already been stated fully in the judgments of Mr. JAGJ. J. The appeal comes to us for resolving the conflict between the decisions of two Division Benches of the Court in *Phoolu Chandra v. Harish Chandra* (1) and *Sham v. Ch. Khanna Singh* (2). In the former case it was decided that the word 'held' in section 9 of the U. P. Zamindari Abolition and Land Reforms Act, 1911, denotatively called the Act creates the existence of a right or title in the holder. In the latter case it was held that this word was also to refer to a person, who has encroached upon the land of another person and has erected a building over the land.

In the latter case the trespasser has encroached upon a part of land in the which long before the commencement of the Act. The remainder remained a suit for his ejection from the suit after demolition of the building. His claim was founded solely on his proprietary right. The suit was decreed and on appeal the learned Judge held in answer that the trespasser could not be





from each other, and the more general is restricted to a more analogous to the less general. In *M. E. Range* author v. Government of Mexico (1), apparently general words were given a narrower meaning in the light of their immediate collocation.

Coming back, therefore, to section 3 of the Act we notice that the word 'held' is the preterite associate of the expression 'belonging to'. This expression connotes a lawful right or title and excludes a wrongful possessory claim. The word 'held' should therefore be construed in a cognate sense, and so construed it would also connote the absence of a lawful right or title.

Again, we have also to look to the expression 'by an intermediary or tenant or other person, which follows immediately after the word 'held'. In the context of intermediary and tenant when the words 'other person' are read *standing* *pro*, as they should be, they would also refer to lawful title-holder and not to a wrongful occupant.

Let us now examine the various contexts of the word in the body of the Act itself. In section 2(1) (c) of the Act the word 'held' is definitely used in the limited sense of a lawful right. In sections 15, 17, 18, 20, 142, 104, 142A, 190, 198, 304 and 312, it is used in the context of lawful title-holder. It may also be observed that, whenever the legislature intended to borrow a legal right or a wrongdoer, it has said so in plain and unambiguous language, for instance, in sections 26, 28, 21(2), 222 and 223.

It would be presumed that the Legislature was aware that the word 'held' has been used to connote a lawful title in some of the earlier tenancy laws, for instance, in section 7 and clause (c) of the first proviso to section 8 of the N. W. F. Ten. Act, 1840 and section 5(1)(a) of the U. P. Tenancy Act.

1. **Introduction**  
 2. **Background**  
 3. **Methodology**  
 4. **Results**  
 5. **Conclusion**  
 6. **References**

In this case, the master notice was procedurally defective under state law. In *Morgan v. Austin-Rosen*,<sup>16</sup> the phrase "and held by him as or" in section 7 of the D. W. F. Rent Act (1984) came up for interpretation by this Court. The defendant in the case had sold his apartment house in question to the plaintiff, who was already in possession, over the land in a mortgage. The plaintiff claimed that the defendant did not become an expropriator tenant under section 7, for the land was not at the time of sale "held by him as or." Relying on this construction from court officers, C.J., said that:

"the words 'land held by him or her' must be construed to mean land belonging to him or to which he was entitled, as in"

In *How* against the *Delectation* of North Collegians (16), it was said that 'hold' was used in correspondence with 'accuse' to denote the state of hold under law. In the King's quest the *Delectation* of Tinsbury (2), this use was adopted. In *How* before 1. *Slippery* (4) it was said that 'hold' was different from 'suspended' and that a person could hold a trust though he was not exercising the trustee.

The system underlying section 9 is to be seen in the light thrown by the preamble and section 4 of the Act on the backward of the nineteenth cen. with respect to buildings in villages. Before the advent of the Act the samodai was the absolute proprietor of every inch of soil within his territory, and no body could build houses or other structures without his leave. Any person erecting a building without his permission stood in the position of a trespasser. The samodai, however, used to grant licenses to his vassals generally to build their houses, etc. over his land. Even as regards to these licensees a trespasser of a building from a village without the permission of the samodai stood in the position of

1. *Journal of Management Studies*, 1996, 33, 1, 1-14.

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a transferee just the remainder who could expect them as well. The preamble of the Act indicates that one of the objects of the Act was to transfer the rights, title and interest of the remainder as his remainder to the State. On such transfer the State becomes the sole proprietor of all land within the jurisdiction, and it would accordingly be peculiar to be enabled to eject the trespasser, who has entered or possessed any building within the jurisdiction even without leave of the previous remainder. Coming now to clause (b) of section 4 of the Act we notice that the license granted by the government occupant in favour of a tenant to erect a building on his land is determined by operation of law. Consequently on the vesting of the remainder in the State of Mysore also became a trespasser (as the State with respect to the use of the building). The Legislature was thus called upon to define the nature or relationship between the State on the one hand and the rent trespasser or the former licensee/trespasser. The purpose of section 4, I think, is to define this relationship. There is no dispute here that the Legislature intends to maintain the status quo ante the former licensee-trespasser. He would now hold the use of the building from the State. It is however maintained that the general language of section 4 also evidences a legislative intention to recognize the claims of a rent trespasser. I am nothing plain and precise in section 4 in marginal notes, which would make manifest a legislative intent of clothing the rent trespasser with the rights of law. The marginal notes cannot, however, be referred to for any purpose in connection with the construction of section 4 (see *State v. Agrapal Singh* (4), and *The Commissioner of Revenue, Bombay v. Ahmedabad Mercantile & Co.* (4)).

If I find in section 4 anything pointing unambiguously to the benefit of the rent trespasser, it is not from exp-

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rule of law, but because I consider that an interpretation should not, when faced with the definite and of incorporating an equivocal term in a statute—go by the letter of the law, but should readily permit the necessary and lack for the time meaning with the aid of the rule of construction that the Legislature does not intend to overthrow suddenly any fundamental (political) norm, in particular, the rule of law, that binds and disempowers a civilized community from anarchy again. This presumption is rebuttable but only by unambiguously plain language. A flexible term in a statute should not therefore be interpreted as to impair the rule of law or make an fundamental departure from the general norm of the law.

Here one may quote, probably, from the opinion of BREWER, J., in *M. K. Thompson v. Government of Mexico* (1). While giving in some general words in the amendment to section 491 (1) of the Mexican Copyright Act a limited meaning, BREWER, J., observed:

"Whereas before the amendment the normal printer stood outside the printing up and could, if the mortgage-debt as provided, realize her security without the intervention of the state by selling a sale either in private (may or be, public auction, no such sale could be effected by him after the amendment, and that was certainly a fundamental alteration in the law which could not be effected unless one found words used which pointed unambiguously to this conclusion or unless such cases can be supported with irresistible clearness. Such a gross and sudden change of policy could not be attributed to the Legislature and it would be ignorance, therefore, to adopt the narrower interpretation of those words of the amendment rather than an interpretation which would have the contrary effect."

If establishment of a more "open and sudden change of policy" appeared in *BEAVERSON, J.*, to be a proper means for not giving the whole meaning to the general words of section 5(a) of the Indian Companies Act, it would, I think, be far less proper for me to think that the word "held" is intentionally used in section 5 by the Legislature for the purpose of acknowledging mere rights as rights, because the efficacy of the rule of law cannot be maintained without disastrous consequences to the society.

Adhering to the rule of literal interpretation I have to bear in mind that words are only human media of expression. I feel immensely relieved to quote the elegant words of *BEAVERSON, J.* in *United States of America v. William F. Stone* (5):

"This question cannot be answered by closing our eyes to everything except the naked words of the Act of 30th June, 1906. The reason that because the words of a statute are plain, its meaning is also plain, is merely a provision, oversimplification. It is a modern English doctrine of rather recent vintage . . . to which my verdict has on occasion been given here, but which since the days of Marshall this Court has rejected, especially in passage . . . A statute, like other living organisms, derives significance and meaning from its environment, from which it cannot be severed without being mortared."

I do not therefore view with favour the method of looking at law as mere despatched summary. Law, as I perceive it, is life and all that is minutely studied with enlightened life. To a large measure, law reflects the dominant philosophy and the ethics of the nation; it strives to preserve and maintain social order and equilibrium. Consequently it is a fallacy to determine

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the mere denotation of a presumptive expenditure by *ex quo* *quo* *claus*, the Judge must bring to bear on his task a *judicious* combination of logic, history, *affirm* and the accepted standards of right conduct and other similar things. In his quest he must also be guided by the exigencies of the age, by precedents and by the duty of adherence to fundamental principles.

There is yet another rule of statutory construction, which should not be overlooked. In interpreting the general language of section 9. This generally, if given its full swing, would give rise to a *consideration* and inconsistency. For instance, if a building belongs to one and is held by another as a trespasser, with whom the State would make the use of the buildings? The owner or the trespasser? Again, suppose some land is deemed to be held by an intermediary as if an intermediary's grant on 10th June, 1932 and on that very date a trespasser constructs a room over a portion of that land. With whom will the State make the use of the room? According to section 18 it will be deemed to be settled with the intermediary who would become a *discretionary* according to section 9. If no general language is given its full swing, it will be settled with the trespasser. A similar conflict will arise as between a tenant under section 14 and a trespasser under section 9. Take a third hypothetical case. Suppose a person is recorded as occupant of some land in the *Abstract* of 1932<sup>1</sup>, but on 10th June, 1932 a trespasser lawfully occupies a portion of that land and builds a room over there. Section 20(1)(i) gives to the former *Adversum* rights and enables him to recover under section 22 a possession over the portion of land whereon the latter has built the room, but according to the wide meaning of section 9 the use of the room will be made by the State with the latter, who cannot consequently be ejected by the former. These *dispositions* are, I think, sufficient to dissuade the Court from allowing to the general

language of section 9 in full play. I cannot imagine that the Act confers rights only to be snatched away at the next breath, nor can I suppose that the Legislature intended so foolish a result.

In the end, one has to make a choice between the broader and the narrower meaning of the word 'held' in section 9. The former has, I think, nothing to commend itself but the insulting role of literal interpretation. The latter has the support of the rule of organic interpretation and precedents, and it also harmonizes with the object and setting of the Act. For my part, I have, therefore, no hesitation in adopting the narrower meaning. I would, therefore, hold that the word 'held' in section 9 refers to a person having some sort of right or title to the building as well as its site, for the word 'building' includes the site also (*Porter v. Bishop of Vancouver Island*). (1) It does not, in my opinion, refer to a person, who has encroached upon the land of some other person and erected a building over there or has taken possession over the building and the site thereof by opening himself a legal claimant.

DEAN, C.J. —[I respectfully differ from the judgments of my brothers MANNING and GERRARD and consider that the appeal should be allowed and the cost brought against the appellants by the respondents should be awarded. The findings of fact which cannot be challenged in second appeal are that the respondents were the owners of the constructions made on the land possessed by the appellants as their tenants, that it is known that they never abandoned the village, their rights as licensees and the constructions but continued to be the owners of the constructions and the licensees of the site and that during their lifetime the appellants undisturbedly took possession of the constructions and their site demolished the constructions and included the site in their own cultivated or

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1. **Introduction**  
 2. **Background**  
 3. **Methodology**  
 4. **Results**  
 5. **Conclusion**  
 6. **References**

constructed a cattle-shed over it. On these findings the writ of the respondents was decreed by the trial Court, and they were ordered to be restored to possession over the site of the construction. There could have been no question of their being restored to possession over the construction because they did not own it at all. The decree was passed on 19th January, 1932, when the U. P. Tenancy Act was in force. It was appealed from by the appellants, and during its pendency the Zamindari Abolition and Land Reforms Act came into force. The lower appellate court on 17th July, 1932, affirmed the decree of the trial court, but without considering the effect of section 2 of the Zamindari Abolition and Land Reforms Act on the rights of the parties. The appellants did not have any arguments on the provisions of the section before it. They preferred a second appeal, and now contended that the cattle-shed should continue to belong to them and that the site should be decreed to be united with them by the State Government. The position on 1st July, 1932, (the date on which the new Act came into force) was that the respondents had a decree in their favour for possession over the site only. Their construction had already been demolished and there was no question of their holding the decree for possession over them. There remained only the site in which they were entitled as tenants, and they held a decree only for restoration of possession over it. There did stand a construction on it, namely the cattle-shed, but that admittedly belonged to the appellants; they might have unlawfully imposed on the site of the construction belonging to the respondents, unlawfully demolished them and unlawfully constructed a cattle-shed over it, and the respondents did not become owners of the cattle-shed. On account of the decree for possession over the site the cattle-shed might go to them along with the site in the execution of the decree, but it did not mean that they became owners of the cattle-shed. If it





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possible to be its owner after that date, the record does not contemplate in all that one person could be its owner before 1st July, 1932, and another, after that date. One more fact to be noticed is that the words "the premises" mean that the building itself continues; so that § will not apply to a building which ceased to exist before 1st July, 1932. Thus it cannot be applied to the construction belonging to the respondents, they ceased to exist before 1st July, 1932; and, the case there was no question of their continuing to own anything, and if there was no question of their owning anything there was no question of any land being seized with them. As regards their own constructions they were not entitled to be deemed to be seized with them because they did not exist, and, as regards the easement it did not belong to them, and was certainly not held by them, and hence no one could not be deemed to be seized with them. Thus they did not derive any benefit from section 2 and their case should have been dismissed by the appellate court.

In the view that I take it is unnecessary to decide what exactly is meant by the word "held". Even if the word "held" is used to mean "held under a title" or "held lawfully" the respondents could not get the benefit of section 2, because as explained above the only building that stood on 1st July, 1932, was the castle shed belonging to the appellants and in their own physical possession, and, since no building belonging to the respondents stood on that date, no land could be deemed to be seized with them. On 1st July, 1932, they lost their rights as licensees (as I shall show presently) and if they could get a decree over the loss of their easement rights, it could be said on the footing that the city was deemed to be seized with them, there was no other basis for a decree to be passed in their favour on or after 1st July, 1932. They could have got a decree for damages in respect of the value of their constructions

or an attempt of the demolition of their constructions, but that it was the decree sought by them. They could have got a decree for possession near the site only if their constructions had stood on it on 1st July, 1925. According to the law it was for them to qualify their title to the land; they could not get a decree on the basis of a weakness in the title of the appellants. The law is as well known that it is unnecessary to the authorities. The appellants might or might not have been entitled to the benefit of the provisions of section 8, but if the respondents were not entitled so in their suit was dropped.

On 12 July, 1992, all the rights of the intermediaries vested in the State free from all encumbrances, which means that all the rights of persons holding under them, whether as tenants or as licensees, were extinguished. Section 4 was enacted to provide for buildings, and there was. The Legislature decided that the enforcement of the Act should not affect the rights in the buildings; they will continue as before. As regards their uses, the Legislature decided that they should be deemed to be vested with those to whom they belonged, or by whom they were held. If a person trespassing upon a land of an intermediary constructed a building, the building belonged to him and the Legislature decided that he will continue to own it as before, there is no change in this. The Legislature was not going to decide questions of title and had to leave them to be decided by courts. The abolition of Zamindari had nothing to do with ownership of buildings; the rights of intermediaries in the case of buildings could arise and be vested in the State without the rights over the buildings being affected. After deciding that the rights over the buildings will continue unaffected, it decided that the licensee rights should go along with them, and this was quasi-legal. If a person trespassed upon an intermediary's land when the intermediary lost all his rights, he also lost the right to recover possession from the trespasser, he had no title to the building and could not claim the

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the building should be given to him and its use should be denied to be settled with him. The only person who could consent to own it and with whom its use could be denied to be settled was the trespasser. It was not a question of the State's favoring a trespasser to against a rightful owner, it had already taken away all the rights of the rightful owner by the wronging and therefore, he was not so lost by the site not being settled with him.

The case of a building owned by one person and wrongfully possessed by another person stands on a different footing. As I said earlier, section 3 deals with two distinct matters (a) a building and (b) its use. A building may belong to one person and its use to another person. A building may belong to one person and may be in wrongful possession of another person. A site may belong to one person and may be in wrongful possession of another person who constructs a building on it. All these cases cannot be dealt with by one rule and the lightness in making that the different cases may be governed by different rules has led to a good deal of confusion, and, if I may say with respect, to the living down of erroneous law. The question of the meaning of the word "hold" arises only when a building belonging to one person is in the actual occupation of another person, if it is in the occupation of the person to whom it belongs he will undoubtedly consent to own it, regardless of the meaning of the word "hold". If the word is understood in its ordinary meaning as 'in possession' or 'occupied', it is applied to him, and, even if it is understood in the restricted meaning, it applies to him as he is in possession or occupation under a feudal title, being the owner. It makes no difference whether he has a feudal title over the site or not because one is concerned only with the building. When a building belonging to one person is in possession of another person whether as a tenant or licensee or as a trespasser, the question will arise as to which of these it is to consent to own or hold it. Several persons may have different

rights over a building, but they cannot have different rights over its site, that site can be deemed to be vested with only one of them. It follows therefore that only one of the persons claiming different rights in a building is contemplated by the phrase "belonging to or held by". Though a building can be said to belong to one person and to be held by another person, section 9 contemplates that only one of them is the person to whom the phrase "belonging to or held by" can apply. The well known canon of interpretation of statutes which avoids absurdities requires the Court to hold that if "A" undoubtedly comes within a statute it should be interpreted so as to avoid B also coming in. If both A & B cannot come in at the same time. When an owner of a building has let it out to a tenant or a licensee he may be deemed to be the person contemplated by the phrase and its site can be deemed to be vested with him and not with the tenant, or the licensee. In other words, "belonging to or held by" can be understood to mean "owned by", and where there is no question of ownership, "possessed by". Where a building is in the possession of a trespasser and the rights of the owner is not lost by lapse of time it obviously belongs to him, and, since the phrase "belonging to or held by" must apply to only one person, it cannot be said to be "held" by the trespasser. It seems to me that since the Court finds that it belongs to a certain person, it is necessary for it to find by whom it is held or if not either, an enquiry into who holds it will be necessary only when an enquiry as to whom it belongs is not appropriate. The rightful owner will continue to own the building, notwithstanding its being in the possession of a trespasser and he will be deemed to be vested with him. These are the only cases in which the site is deemed to be vested with a person who is not in occupation of the building and the previous case is of a different kind and is similar to the case in *Shah v. Ch. Khazan Singh* (1). Neither the judgment of our learned brother nor the argument

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in this case has persuaded me that either that case was wrongly decided or that the facts in the present case are different.

Section 9 deals with all buildings without regard to their ownership and occupation. Buildings as the occupants of their owners (or persons dwelling under them) are as much within its scope as buildings as occupation of trespassers. As the rights of the occupants varied in the past from all circumstances, the Legislature had to make provision in respect of rights in buildings and their use and section 9 is the only provision. Consequently it deals with all buildings however owned and however occupied. The phrase "belonging to or held by" must be so interpreted as to bring within the scope of the section cases of all buildings, however owned and however held. The first question to be considered is not what is the meaning of the phrase, but who is the one person in respect of whom it can be said that the building belongs to, is held by, him, so that the meaning only if you cannot answer it, is you find that more than one person might come within the scope of the phrase. It is beyond comprehension now in the present case that the rule stated can be said to belong to or be held by, the respondents. The appellants are the only persons in whom the phrase can apply and the rule must be deemed to be stated with them. As I said previously, I respectfully disagree with the view taken in *Philo Chesser v. Hensch Chesser* (1). The appeal should be allowed and the connected appeals should be decided in accordance with the views expressed above.

By Two Courts—for the reasons given in our separate judgments, we are of the opinion that this appeal should be dismissed and we direct accordingly. We are also of the opinion that under the circumstances of the case, the parties should bear their own costs of the appeal. The costs of the various below appeals, certified by our order.

*Appel's Answered*

## CRIMINAL REVISION

Before Mr. Justice Upadhyaya and Mr. Justice Shrinigaman

KALLAN KHAN

1930  
11th  
September,  
1930.

vs.

STATE

Foreigner entering India on a visa—Status and regulation of, regarding registration and stay in India—Foreigners Act, 1914, ss. 1(2) (f) and 14—Foreigners Order, 1914, para 2

(Visa) paragraph 2 of the Foreigners Order, 1914, imposes on an alien entering India on the authority of a visa a double duty: (a) to obtain a permit, indicating the period during which he is authorised to remain in India, and (b) to depart from India before the expiry of the period so fixed, or extended by the Central Government. A violation of either of these conditions by itself amounts to an offence punishable under s. 14 read with s. 1(2) (f) of the Foreigners Act.

Kallan Khan v. State (f) referred to

Criminal Revision No. 1716 of 1929 from an order of J. P. Chatterjee, II Addl. Sessions Judge, Muradabad, dated 15th September, 1929

The facts appear in the judgment.

[The case was at first heard by Banner, J., who referred the case to a Bench for decision of a question] by the following referring order—

BANNER, J.—Kallan Khan, the applicant in this criminal revision, was convicted by a first class Magistrate of Muradabad for an offence under section 1(14) of the Foreigners Act and was sentenced to one year's simple imprisonment and a fine of Rs. 25. In appeal the Additional Sessions Judge of Muradabad, while concurring in the conviction, reduced the sentence to six months & 1 and a fine of Rs. 25.

The prosecution allegations were that the accused entered India on March 25, 1927 on a Political Passport

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which he had obtained in July 1953 and an Indian visa granted on March 26, 1957. The period of his visa was extended by the District Magistrate of Mirzapur upon July 27, 1961, but after the expiry of that date he continued to reside in India without permission. Even after he had been served with a notice on February 27, 1958 requiring him to leave India within 30 days he still stayed on and was consequently prosecuted.

It appears that the accused was born in India and migrated to Pakistan soon after the partition, but was unable to find satisfactory accommodation and employment there and hence decided to come back to India. It was stated that when he re-entered India on May 28, 1957 as a Pakistan Passport, he was a foreigner as defined in section 2 of the Foreigners Act (as amended by Act XI of 1947). The question is however whether, on the facts alleged, he can legally be considered under section 2(14) of the Foreigners Act. The charge framed against him was

That you on or about the 13th day of July 1965, being a foreigner, were found remaining in India without any valid passport and permission.

In effect he was charged with non-compliance with section 7 of the Foreigners Order 1948 made by the Central Government in exercise of the powers conferred by section 3 of the Foreigners Act, 1946, which runs as follows:

*Registration in passport in India*—Every foreigner who enters India on the authority of a visa issued in pursuance of the Indian Passport Act, 1920 (XXIV of 1920) shall obtain from the Registrar and Officer having jurisdiction, either at the place at which the said foreigner enters India or at the place at which he presents a registration report as



accordance with rule 4 of the Registration of Foreigners Rules, 1939, a permit authorising the period during which he is authorised to remain in India and shall, unless the period indicated in the permit is extended by the Central Government, depart from India before the expiry of the said period, and at that time of the foreigner's departure from India the permit shall be surrendered by him to the Registration Officer having jurisdiction in the place from which he departs.

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This section lays down that a foreigner entering India must obtain a permit from a Registration Officer and must leave India before the period indicated in the permit expires. But as the permit does not state any period or as to prove what period was mentioned therein. In my view therefore the applicant could not be convicted under section 3/14 of the Foreigners Act for non-compliance with section 7 of the Foreigners Order 1948.

No attention has however been drawn to the decision of a learned Single Judge of this Court in *Wahid Mann v. State (U)* in which it has been held that a foreigner can be convicted for not leaving India within the period indicated in his visa, the argument being that the period shown in the permit referred to in section 7 of the Foreigners Order must be the same as the period shown in the visa. With great respect I find myself unable to agree with this view. It cannot be assumed that a permit must inevitably be issued to every foreigner entering India, and if in any particular case a foreigner does not obtain a permit authorising the period during which he is authorised to remain in India, how can he be held liable to leave

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India "before the expiry of the said period" (1). It may well be that the period noted in the permit would naturally correspond with the period shown in the visa, but when section 7 refers only to the period indicated in the permit and does not require the foreigner to leave India within the time shown in his visa, it does not seem to me that the prosecution can be allowed to dispense with the production of the permit, if it wishes to obtain a conviction.

The view propounded by me that a conviction for infringement of section 7 of the Foreigners Order requires proof of (a) issue of a permit and of (b) staying on in India beyond the period mentioned in the permit, finds support in *State of Madhya Pradesh v. Bhawanji Lal Puri* (1) as well as in *State v. Akhbar*, and *Ram Narayan Khan* (2) and is implied in the decision given by a Division Bench of this Court in *State v. Rajesh* (3).

In view of the fact that this problem is likely to arise in a large number of cases, I direct that the papers of this case be laid before His/Her the Chief Justice with the request that the following questions be referred for decision to a larger Bench:

"In order to secure conviction under section 16 read with section 3(2) (a) of the Foreigners Act, it is necessary to prove (a) that a permit was issued to the accused under section 7 of the Foreigners Order and (b) that the accused stayed on in India after the expiry of the period indicated in the permit, or can the accused be convicted merely for staying on beyond the period shown in his permit?"

(1) A. I. R. 1980 (1) P. 395. (2) A. I. R. 1980 (1) P. 347.  
(3) A. I. R. [1984] = 1984 (2) P. 357.

[The case was then laid before GRAMER and SARKIS-  
TANA, JJ.]

*A. B. Green* for the applicant.

The Assistant Government Advocate for the State.

The judgment of the court was delivered by—

SARKIS-TANA, J. —This application as it now lies has been referred to this Bench for the decision of the following question:

"In order to secure a conviction under section 34 read with section 3(2) (c) of the Foreigners Act, is it necessary to prove (a) that a permit was issued to the accused under section 7 of the Foreigners Order and (b) that the accused stayed on in India after the expiry of the period indicated in the permit, or can the accused be convicted merely for staying on beyond the period shown in his visa?"

The applicant Kallan Khan had migrated to Pakistan. He obtained a passport bearing no. 350631 from the Pakistan Government on the 6th July, 1955 and also obtained visa no. 28781-42 of the 15th March, 1957. The visa was of category "C". He entered India on the basis of the passport and the visa and reported his arrival at police station Mandla on the 15th March, 1955. The District Magistrate of the place granted him a permit enabling him to remain in India till the 15th July, 1957 and fixing the time of exit from India as the 14th July of that year. The permit was never extended but the applicant continued residing in India beyond the period fixed in the permit. On the 24th February, 1958 a notice was given to him requiring him to leave India within thirty days but as he did not comply with it he was prosecuted under section 3 read with section 14 of the

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Foreigners Act. The charge framed against him read as follows:

"That you on or about the 11th day of July 1957, being a foreigner, were found remaining in India without a valid passport and provisions and thereby committed an offence punishable under section 340(a) of Foreigners Act, 1946 and within my cognizance."

The applicant pleaded not guilty. He said that he was an Indian national who had gone to Palestine, but had come back from the place in 1957 because he could not get any employment there. He denied that he had been in India without permission.

The Magistrate, who tried the case, found the applicant guilty of the charge framed against him and sentenced him to undergo simple imprisonment for one year and also to pay a fine of Rs.25. In default of the payment of fine he was directed to undergo further simple imprisonment for one month.

The applicant preferred an appeal to the Sessions Judge who admitted the appeal on the point of severity of sentence. He dismissed the appeal but reduced the sentence to six months' simple imprisonment but maintained the sentence of fine.

The applicant then applied to the Court to revise and the application first came up for disposal before Mr. Justice Bhagwati. He felt inclined that the applicant was a foreigner at the time when he had re-entered India, on the 11th March, 1957 on the basis of his Palestine passport and the visa granted to him. It was contended before the learned Judge that the conviction of the applicant could not be maintained because the prosecution had not proved that any permit had been granted to him as required by paragraph 7 of the Foreigners Order, 1948 and that he had overstayed that

point. It was urged on behalf of the State on the basis of the decision reported in *Whited Mine v. State* (1) that irrespective of the question whether the person or was not issued a license could be convicted for not leaving India within the period indicated in his visa. Mr. Justice Ponnambalam was doubtful about the correctness of that decision and being the question to be a question which was likely to arise in a large number of cases he referred the question which we have mentioned at the beginning of this judgment to a Division Bench for decision.

It is obvious that before the learned judge the case was argued on the basis that though the applicant possessed a passport of the Palestinian Government and had also obtained the necessary visa there was nothing to show that he had obtained a permit for stay as required by paragraph 7 of the Foreigners Order, 1948. It was on that basis that the applicant contended in support of the application in revision that all it was proved that a permit for a particular period had been issued and that the applicant had overstayed that period the applicant could not be removed under section 3(2) (c) read with section 14 of the Foreigners Act, 1948 for the breach of paragraph 7 of the Foreigners Order 1948.

With the help of learned counsel we have perused the record and have seen the passport of the applicant which was filed by him. The passport shows that it was issued originally by the Pakistan Government in 1955. The applicant then obtained a visa of category 'C' from the Visa Officer on the 8th July, 1955. It was valid till the 7th October, 1955. He left Pakistan on the 13th July, 1955 and entered India on the 14th July of that year. He then obtained a permit as required by paragraph 7 of the Foreigners Order, 1948 which enabled him to reside in India till the 31st

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October, 1955 and fixed the time for his exit from India as the 31st October 1955. The period of the permit was subsequently extended first in December, 1955, then in March, 1956 and again in May, 1956. The applicant then left India for Pakistan. On the 25th March, 1957 he again obtained a visa from the Indian High Commissioner at Lahore, van no. 2278142, dated the 25th March, 1957. The visa was for a period of six months and on the basis of the visa he entered India on the 25th March, 1957. He reported himself at Shri. Mundla, district. Moradabad, and obtained from the District Magistrate of Moradabad a permit required by paragraph 7 of the Foreigners Order, 1948 on the 26th June, 1957. The permit entitled him to remain in India till the 15th July, 1957 and fixed the time for his exit from this country as the 14th July, 1957. The applicant did not get the period of this permit extended in any manner but continued residing in India till a notice was served upon him requiring him to leave the country within thirty days.

It is thus clear that the case that the applicant had not obtained any permit as required by paragraph 7 of the Foreigners Order, 1948 and that there was nothing to show the period entered in the permit to enable the Court to find whether the applicant had contravened that period was not correct. A permit as required by that paragraph had been issued to the applicant. Arriving to that permit, he could stay in India only till the 15th July, 1957 and was bound to leave India before the 14th of that month. The period was never extended. He, therefore, he continued staying in India beyond the 15th July, 1957. He clearly contravened a branch of paragraph 7 of the Foreigners Order, 1948 and was as that account liable to be punished under section 24 read with section 14(1) of the Foreigners Act, 1946. He used that the prosecution

had not proved that any permit had been issued to him and that he had arrived in India beyond the period of the permit was therefore, wholly unproved.

In view of the facts above mentioned the question referred, as it does not really arise in this case. As, however, the case has come to us only for answering the question, we proceed to consider it.

Paragraph 7 of the Foreigners Order, 1938 reads as follows:

"Every foreigner who enters India on the authority of a visa issued in pursuance of the Indian Passport Act, 1920 (XXIV of 1920) shall obtain from the Registration Officer having jurisdiction within a the place at which the said foreigner enters India or at the place at which he presents a registration report in accordance with rule 6 of the Registration of Foreigners, a permit indicating the period during which he is authorised to remain in India and shall unless the period indicated in the permit is extended by the Central Government, depart from India before the expiry of the said period; and at the time of foreigner's departure from India the permit shall be surrendered by him to the Registration Officer having jurisdiction at the place from which he departs."

It will be noticed that paragraph 7 provides for two things. In the first place, it provides that every foreigner shall obtain a permit indicating the period during which he is authorised to remain in India. It also provides that the foreigner concerned must, unless the period is extended by the Central Government depart from India before the expiry of that period. Thus the duty of obtaining a permit is also imposed by this paragraph on the foreigner. He, therefore, commits a breach of its provisions not only by obtaining the benefit of the permit if one is granted to him.

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but also by seeking to obtain a permit. In either case the foreigner concerned will be liable to be convicted under section 34 read with section 3(2) (i) of the Foreigners Act.

Remaining in India beyond the period mentioned in the case may be punishable under the Indian Passport Act of 1950 or the Indian Passport Rules of 1951. In order to attract the penalties provided in section 14 of the Foreigners Act it is necessary that there must be some contravention of the provisions of the Act itself or of any order made thereunder or any direction given in pursuance of the Act or the Order. If the allegation is that paragraph 7 of the Foreigners Order, 1948 which has been issued under the Foreigners Act has been contravened it must be proved either that the person concerned had attempted to obtain a permit as required by that paragraph or that he had overstayed the period permitted in that permit.

The case will now go back to the learned Judge who made the reference with the above question.

Question answered



## APPELLATE CRIMINAL

Before Mr. Justice Dwyer and Mr. Justice Sharma

APPEAL

IN

STATE

1953  
March, 19

*Code of Criminal Procedure, 1938, ss. 105, 424, 505—If a permanent Sessions Judge who takes over the file of another permanent Sessions Judge in the same sessions division can make a complaint under s. 424, Cr. P. C. in respect of the offence under s. 105, Cr. P. C. committed in the course of his previous office.*

The question referred to the Bench by the learned single Judge was, "whether as a temporary Sessions Judge being transferred from a jurisdiction, another temporary Sessions Judge who is appointed to that jurisdiction and takes over the file of the transferred Judge can exercise his powers of the first class in circumstances under s. 424 Code of Criminal Procedure in respect of offences committed in s. 105 of the Code during his previous office in the course of his previous office."

The Bench after considering the question is split:

*Mr. J.* (i) that a temporary Sessions Judge who takes over the file of another temporary Sessions Judge in the same sessions division is to all intents and purposes a presiding officer of the court of Session and as such exercises the powers and performs the duties of that court.

(ii) that a temporary Sessions Judge can therefore make a complaint under s. 424, Code of Criminal Procedure in respect of the offences falling under s. 424 of the Code that were committed in the course of his previous office.

*Mr. J.* (iii) that the answer to the question referred was, therefore, in the affirmative.

Case law discussed

Criminal Appeal no. 363 of 1953, from an order of D. B. Lall, Sessions Judge, Allahabad, dated the 11th April, 1953 in Criminal Sessions Trial no. 137 of 1953.

(The case was as first heard by Sessions, J. who referred a question of law to a Bench).

The facts appear in the judgment.

Copied before, for the appellant

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The judgment of the court was delivered by—

UNWAI, J. :—In this case the question referred to us for decision is as follows:—

“Whether on a Temporary Sessions Judge being transferred from a judgeship (personally assuming sessions division) another Temporary Sessions Judge who is appointed to that judgeship (personally assuming sessions division) and takes over the file of the transferred officer, can exercise the powers of the first officer in respect of his office under section 196, Criminal Procedure Code, and whether as a result he can make complaints under section 476, Criminal Procedure Code in respect of offences enumerated in section 196, Criminal Procedure Code that were committed in the court of his predecessor?”

For a proper understanding of the question raised it is necessary to state shortly the facts of the case in which this reference has been made. The appellant was tried for the offence of attempted murder and other offences in the court of the Second Temporary Sessions Judge (Shi Prata Prasad) who committed the appellant *inter alia*, on the finding that he had produced fabricated alibi evidence in his defence. After the decision of this case Shi Prata Prasad was transferred and his place was taken by another Temporary Sessions Judge, Sri Chandra Prasad. An application under section 476, Criminal Procedure Code was then made before the latter officer for the prosecution of the appellant under section 123 Indian Penal Code. After holding a preliminary inquiry and being satisfied that a *prima facie* case had been made out the second officer (Sri Chandra Prasad) filed a complaint against the appellant in respect of an offence mentioned in section 196, Criminal Procedure Code. The appellant was accordingly, convicted of the offence under section 471,

Indian Penal Code against which he filed an appeal to this Court and the same was heard by Basumat, J. It was contended before the learned single Judge that the Temporary Sessions Judge, that is Sri Chandra Prasad could not be the 'successor-in-office' of another Temporary Sessions Judge that is Sri Prem Prakash, even though the former had been appointed to the same judicial division and assumed charge of cases left on the file of the latter. Reliance was sought to be placed on certain observations made by Datta, J. (as he then was) in *Ramona v. State* (1) in which it was held that section 535(1), Criminal Procedure Code is applicable to permanent courts and not to temporary ones. Basumat, J. was of the opinion that the view expressed in the case of *Ramona* (1) was "too narrow and rigid" and required reconsideration and hence referred the above question for decision to a larger bench.

In order to appreciate the controversy, it is necessary first to comprehend the scope of section 478, Criminal Procedure Code. Section 478(1) is in these terms:

"Where any civil, revenue or criminal court is, whether on application made to it or on its behalf or otherwise, of opinion that it is expedient in the interests of justice that inquiry should be made into any offence referred to in section 188, sub-section (1) clause (b) or clause (c) which appears to have been committed in or in relation to a proceeding in this court, such court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint there-of in writing signed by the presiding officer of the court, and shall forward the same to a magistrate of the first class having jurisdiction."

Section 479(1) Criminal Procedure Code defines the form, scope and nature of the complaint mentioned in

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clauses (b) and (c) of sub-section 478 must be read with the two clauses of section 195 when any question about a prosecution started upon the complaint of a court arises.

Clauses (b) and (c) of section 195 when read with the provisions of sub-section (1) of section 478 lead to the conclusion that the power under section 478 may be exercised either by the court which tried the case in the trial of which the alleged offence was committed or by the court in which such court is subordinate. The plain language of clauses (b) and (c) of section 195 itself leaves no room for doubt that the power under section 478 may be exercised by a magistrate even though the trial of the case had not been conducted by him. The only limitation placed on the power of the court making the complaint is that he should be the 'proper' or 'proper' officer of the 'court'.

This leads us to the consideration of the question as to the meaning of the words 'proper officer of the court'. Section 6 of the Code of Criminal Procedure lays down that the State Government shall establish a court of sessions for every sessions division and appoint a judge (Sessions Judge) of such court, and Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in such court and to direct it as to what place or places the court of sessions shall sit. Under the Code of Criminal Procedure there is one 'court' in each sessions division which is manned by a number of judges. The officers presiding over such court are described as Sessions Judge, Additional Sessions Judge, Temporary Sessions Judge, etc. and all of them exercise the same powers in the sessions division in which they are appointed.

The courts have held that under section 478 Criminal Procedure Code the power to direct prosecution is



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In *Interpretation and Remembrance of Legal Officers, Bengal v. Jashubhai Packer* (1) the Additional Sessions Judge of Patna had issued notice to certain witnesses who had made false statements, before him in the course of a summons trial, to show cause why they should not be prosecuted for perjury under section 174, Indian Penal Code. The said Additional Sessions Judge was transferred from Patna, and the persons against whom notice had been issued appeared before the Sessions Judge of Patna and showed cause in respect of the notice. Thereupon the Sessions Judge made a formal complaint against them under section 193 Indian Penal Code. In appeal it was contended on behalf of the appellants that the Sessions Judge of Patna had no power to make the complaint under section 476(1) because the offence, if any, had been committed not in his court, but in the court of the Additional Sessions Judge. The objection of the appellants was overruled by their Lordships and it was held that the offence under section 193 of the Indian Penal Code was committed, if at all, before the Court of Session at Patna, and the complaint was made by a Judge of that court. Their Lordships pointed out—

"It is unnecessary to refer to the 'court of the Sessions Judge' and the 'court of the Additional Sessions Judge', and so on, except colloquially. Just as in the High Court we do not refer to the continuous court as the court of any particular Judge, either 'permanent' or 'additional', it is one Court of Session which is constituted by a number of judges."

They were of opinion that the Sessions Judge of Patna was competent to make the complaint under section 476(1) of the Code, even though the offence in respect of which the complaint had been made was committed in the court of the Additional Sessions Judge.

In *Kapoorji v. Mohideb Lalohani Doo* (1), MULLA, J. of the Bombay High Court issued notice to one of the parties to show cause why he should not be prosecuted for the offence of perjury for having made a false statement before him. After issuing the rule MULLA, J. retired as Judge of that court. The matter then came before CARTER, J. of that High Court, and it was concluded that he (CARTER, J.) had no jurisdiction to dispose of the rule granted by MULLA, J. The question that arose for consideration in that case was whether the word 'court' in section 476 must be taken to mean the High Court or the individual Judge before whom the offence was committed. It was held that—

"The expression 'court' for the purpose of section 476(c), Criminal Procedure Code must be taken to mean 'High Court', and if that is so—as any Judge of the High Court has power to exercise powers of the High Court—, would follow that any Judge could dispose of an application under section 476 whether the matter out of which the offence arose was heard by him or some other Judge of the Court. No doubt as a matter of convenience that would seldom be done but where, as in the present, it was nothing in the language of the statute to preclude any Judge from disposing of such matter as it now before him."

The same view was expressed by the Madras High Court in *Paradeschi Nasta v. Asghar* (2). In that case during the trial of a civil case before the Chief Justice it was found that certain documents were fabricated and had been used by one of the defendants in the suit knowing them to be such. The Chief Justice directed the complaint to be filed against the defendant under section 476 of the Indian Penal Code. Due to some error no formal complaint was filed with the result that the proceedings were quashed. Subsequently a

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written complaint was duly filed by an order of the officiating Chief Justice in the absence of the Chief Justice. Objection was taken to the validity of the complaint on the ground that the officiating Chief Justice was not the court before whom the offence had been committed. Their Lordships while examining the objection observed as follows:

"The order was in terms passed under section 496, Criminal Procedure Code and the real question is whether the officiating Chief Justice has no prohibition to pass the order. The complaint required by section 496, Criminal Procedure Code is the complaint of the court in which the documents were given in evidence and not of the trial judge, and as pointed out in *Kasturiben v. Premchand Lalchand Bhai* (1) when a case is tried by a judge of the High Court the term 'court' occurring in the section must be deemed to mean 'High Court'. There is nothing to prevent any judge of the High Court from dealing with the matter though as a matter of convenience this would seldom be done, and the matter was in this case placed before the officiating Chief Justice as the trial judge was absent at that time."

The above discussion leads to the conclusion that an officer who is exercising the powers of a 'court of session' would be competent to file a complaint under section 476 in respect of an offence committed as or in relation to a proceeding before another officer of that court. In such a case it is wholly immaterial whether the officer concerned is a temporary or permanent member of that court. The real test is whether the second officer, like the first, is a presiding officer of that court. It would, in our opinion, be immaterial whether the judge or the officer filing the complaint is successor in office of the first officer or not.



Section 158(1) of the Criminal Code provides that the powers and duties of a judge or magistrate may be exercised or performed by his successor in office. It will be seen that the powers under the Code have been conferred on courts and not on individual judges or magistrates. Therefore, in order to determine whether a judge or magistrate is 'successor in office' it has to be seen in whether the particular judge or magistrate can be considered to be a presiding officer of the court over which his predecessor exercised jurisdiction. The circumstance that a particular judge or magistrate is a temporary or permanent member is not a relevant consideration, and cannot make any difference to his status as a 'court'.

On the facts of the case at hand it appears to us clear that the second Temporary Sessions Judge (Mr. Chandra Prakash) was the successor of the first officer (Mr. Purn Prakash) before whom the offence was committed. The Sessions judge had actually allowed to him the entire case work, on the file of the first officer and thus determined his status as successor under section 158(1) of the Criminal Procedure Code.

The case of *Ramamo v. State* (1) has really no bearing on the facts of the present case. There the court was considering the powers and duties of magistrates in general and had expressed the view that there is no permanent court of the magistrates of the first class created as such and therefore it can not be said that the court of one magistrate is the same as the court of another magistrate exercising jurisdiction over the same territory. It was observed in that case that—

" Since the court of a magistrate of the first class is not a permanent court the Government has the power of creating as many courts as it likes and can go on changing their territorial limits."

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Mr. Justice Dixon (as he then was) was, therefore, of opinion that a Magistrate of the first class is such *not* to be said to be an officer presiding over a court in the strict sense of the term. It was, therefore, held that a Magistrate could not make a complaint under section 476, Criminal Procedure Code, in respect of an offence mentioned in section 192, Criminal Procedure Code committed before another magistrate.

We think that where a magistrate is presiding over a court and is succeeded by another in a temporary capacity, the latter, if invested with the powers of the court over which the first officer presided, would be competent to file a complaint under section 476 Criminal Procedure Code. The nature of his appointment, though temporary, would not in our view affect his powers in the presiding office of that court.

In *Earle Charles Muty* (1) the Sub-Divisional Officer of jurisdiction received information of an alleged offence and took cognizance of that offence and directed issue of a warrant of arrest against certain persons. In the meantime he left the court temporarily on duty. The State Government appointed one Mr. Chatterji, a first class Magistrate, to perform the duties of the Sub-Divisional Officer during his absence. He signed the warrant in the absence of the Sub-Divisional Officer as required by section 70 of the Criminal Procedure Code. There was unlawful resistance to the execution of the warrant and the persons concerned were persecuted and convicted. It was contended before the High Court that Mr. Chatterji who had signed the warrant was not the presiding officer of the court of the Sub-Divisional Officer and, as such, he had no authority to issue the warrant.

The Patna High Court repelled the contention and held that where a magistrate is appointed by Government with power to take cognizance of offences and to perform the functions of the Sub-Divisional Officer while the latter is away from the station, he is the presiding officer within the meaning of section 75, Criminal Procedure Code. It was pointed out that although under section 104, Criminal Procedure Code only the magistrate who has taken cognizance of an offence may direct the issue of warrants, nevertheless the magistrate who signs the warrants, provided he comes within the term 'presiding officer' may sign the warrants although he may not have been the particular individual who has taken cognizance of the offence. The mere fact that in that case Mr. Chatterjee who signed the warrants was holding charge of the Sub-Divisional Officer temporarily did not make any difference to his powers as the presiding officer of that court.

We think that the view taken by the Patna High Court is in consonance with the provisions of the Code. We are clearly of opinion that a Temporary Sessions Judge who takes over the file of another Temporary Sessions Judge in the same sessions division is in all respects and purports a presiding officer of the court of sessions and, in such circumstances the powers and performs the duties of that court. He can, therefore, make a complaint under section 474, Criminal Procedure Code in respect of the offences falling under section 358, Criminal Procedure Code that were committed in the event of his predecessor.

The answer to the question referred to us must therefore be in the affirmative.

*Question answered affirmatively.*

4th  
May  
1936.  
Allahabad.  
P.



C. B. Agarwal, Senior Advocate (4 B. Goyal and others, *Ex. Agarwal Advocates*, with him) for the appellants.

Case No. 10481 and C. P. Ex. Advocates for the respondents.

The following judgment of the Court was delivered by—

C. B. AGARWAL, J. —These two appeals arise out of two suits pending filed by the appellants Raja Harish Chandra Raj Singh against the respondents the Deputy Land Acquisition Officer and another in the Allahabad High Court, and they were based on the same facts and asked for the same relief. Both of them raise a short common question of limitation the decision of which would depend upon the determination of the scope and effect of the provisions of the proviso to section 18 of the Land Acquisition Act, I of 1894 (hereafter called the Act). Since the facts in both the appeals are substantially the same we would refer to the facts in Civil Appeal no. 15 of 1934. The decision in this appeal would govern the decision of the other appeal, Civil Appeal no. 16 of 1934.

The appellant Raja Harish Chandra Raj Singh was the proprietor of a village called in the District of Shikhar. It appears that proceedings for compulsory acquisition of land including the said village for a public purpose were commenced by respondents 1, the State of Uttar Pradesh, notifications under sections 4 and 5 of the Act were issued in that behalf, and the provisions of section 17 were also made applicable. Accordingly, after the notice under section 5(1) of the Act was published possession of land was taken by the Collector on 15th March, 1930. Thereupon the appellant filed his claim as compensation for the land acquired in accordance with section 18(2), and proceedings were held by the Deputy Land Acquisition Officer, respondents 1, for determining the amount of compensation. It appears that in these proceedings an award

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was made, signed and filed in his office by respondent 1 on 21st March, 1963. No notice of this award was, however, given to the appellant as required by section 17(1) and it was only on or about 19th January, 1964, that he received information about the making of the said award. The appellant then filed an application, on 26th February, 1963, under section 18 requiring that the matter be referred for the determination of the Court, as according to the appellant, the compensation amount demanded by respondent 1 was quite inadequate. Respondent 1 took the view that the application thus made by the appellant was beyond time under the proviso to section 18 and so he opposed it. The appellant then filed a writ petition in the Allahabad High Court on 11th December, 1963, in which he claimed appropriate relief in respect of the order passed by respondent 1 on his application made under section 18. This petition was heard by Mookerjee, J., and was allowed. The learned Judge directed respondent 1 to consider the application made by the appellant on the merits and deal with it in accordance with law. He held that in dealing with the said application respondent 1 should treat the application as filed in time. Against this decision the respondents preferred an appeal to a Division Bench of the said High Court. Mookerjee, C. J., and Chatterjee, J., who heard the appeal took the view that the application filed by the appellant under section 18 of the Act was barred by time and so they allowed the appeal, set aside the order passed by Mookerjee, J., and dismissed the writ petition filed by the appellant. The appellant then moved for and obtained a certiorari from the said High Court and it is with the certiorari that he has come to this Court on the present appeal, and so the short question which the appellant raises for our decision is whether the application filed by him under section 18 of the Act was in time or not.

Before proceeding to construe the material provisions of section 18 it is necessary to refer very briefly to some other sections of the Act which are relevant to order in appreciating the background of the scheme in relation to land acquisition proceedings. Section 4 deals with the publication of the preliminary notification and prescribes the powers of the appropriate officers. Whenever it appears to the appropriate Commissioners that land in any locality is needed for any public purpose a notification to that effect shall be published in the official Gazette and a public notice of its substance shall be given at convenient places in the said locality, that is the effect of section 4(1). Section 4(2) deals with the powers of the appropriate authorities. Section 5 A provides for the hearing of objections, filed by persons interested in any land which has been notified under section 4(1). After the objections are thus considered a declaration that land is required for a public purpose follows under section 5(1). Section 5(2) provides for the publication of the said declaration, and section 5(3) makes the declaration conclusive evidence that the land is needed for a public purpose. Section 6 requires the Collector to give public notice in the manner specified stating that the Government intend to take possession of the land and calling for claims as compensation in respect of all interests in such land. Section 6(2) prescribes the particulars of such notice, and section 6(3) and (4) provide for the manner of serving such notice. Section 11 deals with the enquiry and provides for the making of the award by the Collector. Section 12(1) then lays down that the award when made by the Collector shall be filed in his office, and shall, except as otherwise provided, be final and conclusive evidence as between the Collector and the persons mentioned whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the

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appellant  
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apportionment of the compensation among the persons interested. Section 13(3) is important. It makes it the duty of the Collector to give immediate notice of his award to each of the persons concerned as are not present personally or by their representatives when the award is made. It is common ground that no such notice was given by respondent 1 to the appellant. That itself is the essence of the relevant provisions of Part II of the Act which deals with compensation.

Part III which deals with reference to Court and procedure therein opens with section 18. Section 18 (1) provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by him for determination of the Court, hereafter, whether the amount of compensation is adequate or not. It is under this provision that the appellant made an application from which the present appeal arises. Section 18(2) requires that the application shall state the grounds on which objection to the award is taken. These grounds have been stated by the appellant in his application. The proviso to section 18 deals with the question of limitation. It prescribes that every such application shall be made (a) if the person making it was present or represented before the Collector at the time when he made his award within six weeks from the date of the Collector's award; (b) in other cases within six weeks of the receipt of the notice from the Collector under section 13(3), or, within six months from the date of the Collector's award whichever shall first expire. The appellant's case falls under the latter part of clause (b) of the proviso. It has been held by the Affiliated High Court that since the application made by the appellant before respondent 1 was made beyond six months from the date of the award no question of time beyond time. The view taken by the



High Court proceeds on the literal construction of the relevant clause. As we have already seen the award was signed and delivered in his office by respondent 1 on 24th March, 1953, and the application by the appellant is made under section 18 on 24th February, 1953. It has been held that the effect of the relevant clause is that the application made by the appellant is plainly beyond the scope permitted by the said clause and as respondent 1 was right in rejecting it as barred by law. The question which arises for our decision is whether this literal and mechanical way of construing the relevant clause is justified in law. It is obvious that the effect of this construction is that if a person does not know about the making of the award and is himself not to blame for not knowing about the award his right to make an application under section 18 may in many cases be rendered ineffective. If the effect of the relevant provision unambiguously is as held by the High Court the unfortunate consequence which may flow from it may not have a material or a decisive bearing. It, on the other hand, is as possible reasonably to construe the said provision so as to avoid such a consequence it would be legitimate for the Court to do so. We must therefore enquire whether the relevant provision is capable of the construction for which the appellant contends, and this naturally raises the question as to what is the meaning of the expression "the day of the Collector's award."

In dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector under section 12. In a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, *inter alia*, as respect of the amount of compensation which should be paid to the person interested in the property awarded. But legally the award cannot be treated as

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Secretary of State for India (1), and their Lordships have separately approved of the observations made by the High Court to which we have just referred. Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government or the owner of the property then the making of the award is properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability in cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office, it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the loose and unaided construction of the words "the date of the award" occurring in the relevant section would not be appropriate.

There is yet another point, which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the award decisively affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is crucially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. That considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the

[illegible]



that the section requires the Collector to give notice of the award immediately after making it. This provision lends support to the view which we have taken about the construction of the expression "from the day of the Collector's award" in the proviso to section 12. It is therefore communication of the order is required by the Legislature as necessary then section 12(2) has imposed an obligation on the Collector and if the relevant clause in the proviso is read in the light of this statutory requirement it tends to show that the literal and mechanical construction of the said clause would be wholly inappropriate. It would indeed be a very curious result that the failure of the Collector to discharge his obligation under section 12(2) should directly tend to make ineffective the right of the party to make an application under section 14, and this result could not possibly have been intended by the Legislature.

It may not be convenient to refer to some judicial decisions bearing on this point. In *MacDonald v. The Secretary of State for India in Council* [(1), *Revenue and Stamp Div.*, II], held that under the promise to settle B until an award is pronounced or otherwise made to the person concerned it cannot be said to be legally made. An award under the Act, it was observed in the judgment, is in the nature of a tender and obviously no tender can be made unless it is brought to the knowledge of the person to whom it is made. The learned Judge observed that this proposition applied to him, to be self-evident. The same view has been expressed by the Quia Judicial Commissioner in *Hem-Das Pal v. The Municipal Board, Lucknow* (2).

On the other hand, in *Jrjanger Romani v G B Enghard* (5) the Bombay High Court has taken the view that the element of equity is only an essential

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the code without reference to its commencement. This argument was rejected by the Bombay High Court and it was held that it would be a reasonable approximation to hold that the making of the order implies notice of the said order, either actual or constructive, to the party affected by it. It would not be easy to reconcile this decision and particularly the reasons given in its support with the decision of the same High Court in the case of *Pringle Bhanu* (1). The object clause under section 13-A (2) of the Indian Income Tax Act has also been similarly construed by the Madras High Court in *D. A. D. A. M. Murthy Chettiar v. The Commissioner of Income-tax, Madras* (2). "If a person is given a right to resort to a remedy against an adverse order within a prescribed time", observed *Rajagopalrao, C. J.*, "limitation should not be supposed to run from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and therefore must be presumed to have the knowledge of the order." In other words the Madras High Court has taken the view that the omission to use the words "from the date of commencement" in section 13-A (2) does not mean that limitation can start to run against a party even before the party either knew, or should have known about the said order. In any case this conclusion is obviously right.

A similar question arose before the Madras High Court in *Amambala Chettiar v. Col. J. G. Chettiar* (3). Section 15 of the Madras Boundary Act XXVIII of 1880 fixed the time within which a suit may be brought so as to nullify the decision of the settlement officer as to the limits from the date of the award, and so the question arose as to when the time would begin to run. The High Court held that the time can begin to run only from the date on which the decision is communicated

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in the parties. "It shewn with any decision at all to the  
 sense of the Act," was the judgment, "it could not  
 date earlier than the date of the communication of it  
 to the parties, otherwise they might be barred of their  
 right of appeal without any knowledge of the decision  
 having been passed." Adopting the same principle a  
 similar construction has been placed by the Madras  
 High Court in *K. P. J. Sreenivasan alias Chidambaram Pillai v. Latchmanan Chettiar* (1) on the limitation  
 provisions contained in sections 15(1) and 17(1) of the  
 Indian Registration Act XXV of 1908. It was held that  
 in a case where an order was not passed in the presence  
 of the parties or after notice to them of the date when  
 the order would be passed the expression "within three  
 days after the making of the order" used in the said  
 sections means within thirty days after the date on  
 which the communication of the order reached the  
 parties affected by it. These decisions show that where  
 the rights of a person are affected by any order and  
 limitation is prescribed for the enforcement of the  
 remedy by the person aggrieved against the said order  
 by reference to the making of the said order, the making  
 of the order must mean either actual or constructive  
 communication of the said order to the party concerned.  
 Therefore, we are satisfied that the High Court  
 of Allahabad was in error in coming to the conclusion  
 that the application made by the appellants in the  
 present proceedings was barred under the proviso to  
 section 18 of the Act.

In the result we allow the appeals, we make the  
 orders passed by MAHOMED, C. J., and CHATURVEDI, J.,  
 and reverse those of MAHOMED, J. In the circum-  
 stances of this case there would be no order as to costs.

*Appeals allowed*



## SUPREME COURT

## APPELLATE CRIMINAL

Before the Hon'ble the Chief Justice Mr. Bhanumehar  
Prasad Sinha, the Hon'ble Mr. Justice Das the  
Hon'ble Mr. Justice Sankar the Hon'ble Mr.  
Justice Das Gupta, and the Hon'ble Mr.  
Justice Dwyer

1945  
April 5

TUDA HUSAIN

v

STATE OF UTTAR PRADESH

[ON APPEAL FROM THE HIGH COURT AT  
ALLAHABAD]

**Foreigner's remedy in India.**—*Prohibition of emigration for*—  
*Section 4 of Passport, in 1920*—*Foreigners Act, 1946, in*  
*Part I and II*—*Foreigners Order, 1948, para. 1*—*British*  
*Nationality and Status of Aliens Act (a) and (b) and (c) and (d)*  
*in 1948 (a)*

No one can be deported for a breach of paragraph 7 of the  
Foreigners Order unless he was a foreigner in the eyes of the  
law in India. A natural born British subject coming back  
in 1948 on a passport granted by the Government of Britain  
had not lost his status of a British subject and was  
therefore not liable to deportation. The restriction in India  
beyond the period allowed by the law.

General Appeal no. 129 of 1945, from the judgment  
and order, dated the 6th March, 1946 of the Allahabad  
High Court in Criminal Revision no. 487 of 1945

The facts appear in the judgment.

*Nasim Lal*, Advocate for the appellants

*G. C. Mathur and C. P. Lal*, Advocates for the re-  
spondent

191.  
The  
Appellant  
is  
Sardar  
J. Ram  
Kishan  
Singh

The following judgment of the Court was delivered by—

**SARAN, J.**—The appellant who had earlier left India, returned on a passport granted by the Government of Pakistan on 10th May, 1955. He had a visa endorsed on his passport by the Indian authorities permitting him to stay in India for three months and this permission was later extended up to 15th November, 1955. He did not, however, return to Pakistan within that time upon which he was convicted under section 14 of the Foreigners Act, 1946, by a Sub-Divisional Magistrate on 14th March, 1956, and sentenced to rigorous imprisonment for one year. His appeal to a Sessions Judge was dismissed and the High Court at Allahabad on being moved in revision, refused to interfere with the order of the Sessions Judge. This appeal is against the judgment of the High Court.

The appellant had been convicted for breach of paragraph 7 of the Foreigners Order of 1948, issued under section 3 of the Foreigners Act. That paragraph requires that every foreigner entering India on the authority of a visa issued in pursuance of the Indian Passport Act, 1920, shall obtain from the appropriate authority a permit indicating the period during which he is authorised to remain in India and shall, unless that period is extended, depart from India before its expiry. As earlier stated the visa on the appellant's passport showed that he had permission to stay in India till 15th November, 1955, but he stayed on after that date. Hence the conviction.

It is contended on behalf of the appellant that he could not be convicted of a breach of paragraph 7 of the Foreigners Order for that paragraph applies to a 'foreigner' entering India on the authority of a visa issued in pursuance of the Indian Passport Act and even saying the period for which he is permitted to stay in

India. It is contended that the foreigner contemplated in the paragraph is a person who was a foreigner on the date of his entry into India. The appellant says that on that date he was not a foreigner and, therefore, the provisions of the paragraph do not apply to him. The contention of the appellant is plainly correct. The paragraph contemplates a foreigner entering India, and, therefore, a person who at the date of the entry was a foreigner.

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Now, the word "foreigner" in paragraph 7 has the same meaning as that word has in the Foreigners Act. The word "foreigner" is defined in that Act in section 1(a). That definition has changed from time to time, but we are concerned with the definition as it stood in 1902 when the appellant entered India, which was in these terms:

"foreigner" means a person who—

- (1) is not a natural-born British subject as defined in subsections (1) and (2) of section 1 of the British Nationality and Status of Aliens Act, 1901, or
- (2) has not been granted a certificate of naturalisation as a British subject under any law for the time being in force in British India, or
- (3) is not a citizen of India.

The appellant's contention is that he was not a foreigner because he came within clause (1) of the definition as he was a natural-born British subject within section 1(1), (2) of the British Nationality and Status of Aliens Act, 1901. Now that provision is in these terms:

Section 1. (1) The following persons shall be deemed to be natural-born British subjects, namely,—

- (a) any person born within His Majesty's Dominions and allegiance

That the appellant was born at Allahabad at a time when it was within His Majesty's Dominion is not

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Appellant  
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British born  
London  
Foreigner  
Section 3

in dispute. That being so, we think that it must be held that at the time of his entry into India the appellant was a naturalised British subject and, therefore, not a foreigner. He could not have constituted a British of paragraph 3 of the Foreigners Order.

In the result we allow the appeal and set aside the conviction of the appellant and sentence passed on him.

Before leaving this case we think it right to make a few more observations. The definition of a foreigner in the Foreigners Act was extended with effect from 19th January, 1957, by Act 13 of 1957. The definition since that date is as follows: "foreigner" means a person who is not a citizen of India". Under section 3(1) (c) of the Foreigners Act, the Central Government has power to provide by order made by it that a foreigner shall not remain in India. We wish to make it clear that we have said nothing as to the effect of the amended definition of "foreigner" on the status of the appellant. No question as to the effect of the amended definition on the appellant's status fell for our decision in this case for we were only concerned with his status in 1953. We would also point out that no order appears to have been made concerning the appellant under section 3(1) (c) and we are not to be understood as deciding any question as to whether such an order could or could not have been made against the appellant.

*Appeal allowed*

## SUPREME COURT

## APPELLATE CIVIL

Before the Hon'ble Mr. Justice Sukha Ram, the Hon'ble  
Mr. Justice Dyal and the Hon'ble Mr. Justice  
Mukherjee

100  
APRIL 12

SARDH HIRA LAL PATNI (Appellant)

v.

SETU LOONLARAN SETHI & OTHERS  
(Respondents)

[ON APPEAL FROM THE HIGH COURT AT  
ALLAHABAD]

**Reserve.**—Duration of office of, on a writ—Lost by removal—  
Temporary suspension of writ to meet the exigencies of  
Land Procedure, 1908, O. XL r. 3.

There is no express provision in the Code of Civil Procedure with regard to the time when and the mode in which the office of temporary judge comes to an end. A review of the relevant provisions in the following summary of the law on this subject:

(1) If a person is appointed to a post upon judgment, the appointment is brought to an end by judgment in the suit.  
(2) If a person is appointed to a post, without his name being regularly declared, he will continue to be answerable to the court charged.  
(3) But when the final disposal of the case is known, parties to the litigation the receiver's liability is terminated; he would still be answerable to the Court as an officer till he is finally discharged.  
(4) The Court has ample power to continue it in session when the final disposal of the litigation of the case is complete.

(5) The reserve demands of the High Court in India tends to strengthen the view that a court, unless given a final order a matter referred to it is party to the suit or case, in course of its summary proceedings unless the Court expressly conferred a right of recovery under the law then in the matter.

Case law discussed.

Civil Appeal no. 103 of 1961 from the judgment and order dated the 14th October, 1960, of the Allahabad High Court in First Appeal from Order No. 41 of 1959.

The facts appear in the judgment.

19th  
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1891  
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C. B. Agarwala, Senior Advocate (Bombehay-Nath, V. N. Dasgupta, J. B. Ghosh and P. S. Poddar, Advocates of Messrs. Rajender Bros. & Co. with him) for the appellants.

E. B. Clouston, A. K. Rety and Rama Rao, Advocates for the respondents no. 1.

P. P. Sinha, Senior Advocate (M. J. Chatterjee, Advocate with him for the respondents nos. 2, 3 and 4.

H. V. Sanyal, Additional Solicitor-General of India.

(G. C. Mathur, Advocate with him) for the respondents no. 5.

Munshi Lal, Advocate, for respondents no. 7.

The following judgment of the Court was delivered by—

SCHUBBART, J. :—This appeal by special leave is directed against the judgment dated 14th October, 1900 of the High Court of Judicature at Allahabad confirming the order passed by the Civil Judge, Agra, directing the Official Receiver to take possession of the property of the appellants.

This case illustrates how the enforcement of an interlocutory order appointing a Receiver made in the interests of all the parties concerned could be obstructed and the object of the order would be defeated by dilatory tactics adopted by one party or other.

As Agra, there were three spinning mills and one new mill, all of which together were described as the Jaina Mills; and, originally, the Jaina family or their predecessors were the owners of all these mills. At the time the present proceedings were initiated, other persons had acquired interests therein. The following persons were the present owners of the mill:—(1) Harnai Puri, the appellants, and Munshi Lal Mehta—(2) Harnai Puri, (3) Gumbharnath Puri, Private Ltd.—(4) Harnai

share" (2) Messrs. John & Co.—11/10th share, and (3) 1 E. John—3, 4th share. Said Loonkaran Sethiya, respondent no. 1, advanced large amounts to Messrs. John & Co. on the security of its business assets and stocks. On 18th April, 1909, the said Sethiya filed O. 3 on 76 of 1908 in the Court of the Civil Judge, Agra, against John & Co. for the recovery of the amount due to him by sale of the assets of the said company. To that suit the partners of Messrs. John & Co., for convenience described as "defendants 1st set", and the partners of Messrs. John Jain & Co., who were for convenience described as "defendants 2nd set", were made parties. Pending the suit, the said Sethiya filed an application under O. XL, r. 1, Code of Civil Procedure, for the appointment of a Receiver. By an order dated 22d May, 1909, the learned Civil Judge appointed two joint Receivers and directed them to run the three spinning mills. Harish Parna filed an appeal against that order in the High Court at Allahabad, and the said Court by its order dated 23rd August, 1909, modified the order of the Civil Judge confining the order of appointment of Receivers only to the share of Messrs. John & Co. in John Jain Motors & Co. Loonkaran Sethiya made another application in the Court of the Civil Judge for the appointment of a Receiver for the property of Harish Parna and the learned Civil Judge by his order dated 1st December, 1909, directed the Receivers to take possession of the appellant's share in the mills also. Against this order an appeal was preferred to the High Court and the operation of the said order was stayed pending the disposal of the appeal. On 26th April 1910, the Civil Judge passed a preliminary decree against the defendants therein directing them to deposit the decretal amount in court within the prescribed time, and in default the plaintiff was given a right to apply for a final decree for sale of the business assets of the defendants. The decree also gave a right to apply for a personal

1909  
Said  
Sethiya  
vs.  
Messrs.  
John & Co.  
&  
Messrs.  
John Jain & Co.  
(1st set)  
(2nd set)





decree, and directed the Receiver to lease out the said floor mill by auction for a period of two years. Pursuant to this order, no auction was held, and the appellant was the highest bidder, and he paid the lease amount and executed a formal lease deed. Not satisfied with the order of the Civil Judge, Hira Lai Puri preferred an appeal to the High Court. The High Court in its elaborate judgment considered the contention raised on behalf of Hira Lai Puri and dismissed the appeal. Hence the present appeal.

Learned counsel for the appellants urged before us the following three contentions, which the appellants unsuccessfully raised before the High Court as well as before the Civil Judge:— (1) On a strict construction of the relevant orders, the Receiver has no power to dispossess the appellant in such a way as to prevent him from working his flour mill. (2) After the passing of the final decree, though the Receiver may continue for the purpose of attending and discharge of duties, he cannot exercise any powers in respect of the rights of the parties. And (3) in any view, as the appellant acquired a right under a lease deed and continued in possession after its expiry, he could be dispossessed only by a writ and not by a summary procedure.

The first question turns upon the construction of the relevant orders. The Civil Judge appointed two joint Receivers by an order dated 22nd May, 1945. It is not necessary to consider the said order as the final order thus governed the rights of the Receiver and the parties was that made by the High Court on appeal on 22nd August, 1946. After considering the submissions of the parties, the High Court came to the conclusion that a Receiver should be appointed to be in charge of the cross property, movable and immovable, of the defendants in so far as its protection and preservation. The order of the High Court described the joint family as

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Hira Lai  
Puri  
vs  
Laxminaray  
Dewan  
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defendants, in suit to the suit, and defendants 4, Hui Lai Pao, defendant 5, International Motors, and Messrs John Jack Motors & Co. as defendants 6 and 7. This order was confined only to the properties of defendants 1 to 3. The High Court further proceeded to state:

"In the finance agreement as plaintiff's favour, the plaintiff was not given any right to enter into possession on non-payment or to run the mills. . . . Thus being no right given to the plaintiff to enter into possession and manage the mills or to have a receiver appointed, a receiver can be appointed only under Order XL, rule 1 of the Code of Civil Procedure."

Adverting to the contention raised by the defendants that a Receiver could not be appointed to run the mills, the High Court observed:

"In view of the order that we propose to pass today we do not want to go into that question. In case the mills are not run under the order of the Collector under the United Provinces Industrial Disputes Act, or by the persons we propose to give the powers permission to manage the mills. In case we decide to appoint a receiver to run the mills we shall then consider whether a receiver can or cannot be appointed for the purpose of running the mills."

Then the High Court added:

"We have already set out the circumstances which in our opinion make it necessary that a receiver should be appointed to take charge of the property of defendants first as whether under the finance agreement of July, 1945, there was a change created on the property, movable and immovable, or not. The Receiver will run machines with the running of the mills except under express orders of the court and in the event when it becomes necessary by reason of the value of the security being jeopardised by the action of the defendants."

Then the High Court pointed out that the Collector had the power under section 3 of the Industrial Disputes Act to make arrangements for the running of the mills until the High Court ordered.

It may be necessary from time to time to give directions to the receiver. The parties may also want portions of this order to be clarified or other directions obtained. The lower court may give such directions to the receiver or to the parties as it may consider just and proper. In case further directions are necessary or the receiver or the parties are not satisfied with the directions given they may move the court for further directions.

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Shortly stated, the High Court confirmed the order of the Civil Judge appointing the Receivers and directed them to take charge of the properties of defendants 1a to 1c. The High Court expressly prohibited the Receivers from interfering with the running of the mills except under express orders of the court, for at that time it did not think it necessary to direct the Receivers to do so. It may be recalled that the Receivers were not appointed for the four mill of the appellants, 87th La Plume, as he was one of the defendants, belonging to the 2nd set. Learned counsel for the appellants contends that this order did not put the mills in the possession of the Receivers and that the Receivers were given only a supervisory control over the share of the defendants 1a to 1c in the mills. Whatever terminology may have been used, the fact remains that the Receivers were put in charge of the entire property of defendants 1a to 1c, which includes their share in the mills, though it was equally made clear that the Receivers could not directly run the mills without further directions in that regard.

The Civil Judge by his order dated 1st December, 1911, directed the Receivers to take possession of the

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share of defendants (and) not also. The operative portion of that order reads:

"For all these reasons I have come to the conclusion that it is just and convenient that a receiver should be appointed over the share of the defendants (and) not, and I order that the present receivers who are in possession of the defendants (and) not share should also be appointed receivers over the share of the defendants (and) not. As for the prayer allowing the receivers to run the mills the question of running of the mills is already before the High Court as is shown by the compromise dated 16th September, 1950. It is not known what has happened after that compromise. The receivers are directed to seek the decision of the Hon'ble High Court on the question of the running of the mills so that there may be no chance of conflicting of orders passed by this court and the Hon'ble High Court on this matter. The receivers will not interfere with the running of the mills except under express orders of this court and to the extent when it becomes necessary by reason of the value of the property being jeopardized by any action of the persons running the Mills. The receivers are appointed over the share of the defendants (and) not only, for the purpose of preservation and protection and realization of the rent."

This order runs on the same lines indicated by the High Court in its earlier order in respect of the share of defendants (and) not. What is to be noted is that under this order the Receivers were prohibited from running the mills except under the specific orders of the said court or of the High Court. On 16th April, 1951, a protest was made in the suit, and under that protest the defendants were directed to deposit a sum of Rs.12,00,000 in court within the prescribed time and

to defend the plaintiff was given a right to apply for a final decree for the sale of the assets of the spinning mills. There was a further direction that in case the net sale proceeds of the said property were found insufficient to satisfy the plaintiff's claim, the plaintiff would get a personal decree against defendants for an and defendants liable for the balance of his claim. The Receivers were directed to continue on the property until discharged. Under the preliminary decree, the plaintiff became entitled not only to the sale of the assets of the spinning mills but also to a personal decree against all the defendants for recovering any balance that might still be due to him after the sale of the said properties. What is more, the Receivers were expressly directed to continue till they were discharged, and as the decree did not specify the powers of the Receivers, it must be held that they continued to exercise such powers as they had under the previous orders of the court dated 22nd August, 1949 and 1st December, 1950.

On 25th March, 1953, the learned Civil Judge, Agra, proposed a scheme for the running of the three spinning mills, and the parties preferred two appeals to the High Court against the scheme. On 22nd July, 1955, a compromise was effected between the parties as the said two appeals and the appeals were disposed of in terms of the compromise by order of the High Court dated 22nd August, 1954. As the terms of this order are rather unimportant in the context of the questions raised before us, we would read the relevant passages thereof.

Clause 1. That the aforesaid parties have without prejudice to their rights and liabilities between them having after deliberate consideration and in a special effort to make arrangements for running the Johns Mill, have decided that the three spinning Mills and Flour Mill situated in Agra should be run

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to the parties as inconsistent with the terms and conditions set forth below

" " " "

(c) That the lease shall be granted by the receiver on terms and conditions approved by the Court.

" " " "

(d) If any lessee shall fail to run the Mill after delivery of possession or pay the lease money as bid or carry out the arrangements arrived at between the parties for a period of three months, the receiver shall take possession of the Mills and with the permission of the Court shall lease out that particular mill to any of the parties excepting the party in default who may offer the highest bid in accordance with the orders passed by the Civil Judge in this matter.

Clause 4. " " " " " "

The arrangements embodied in this document is only for the purpose of working the mills by the prisoners. Nothing contained in this document will affect the rights and obligations of the parties which are or may be the subject-matter of nos Nos 75 of 1948 or in any litigation between the parties and notwithstanding anything contained herein has subject however to the express provision in the preceding paragraph of this clause it will be open to the prisoners to make these remedies in any manner provided by law, and without prejudice to the rights of the parties to obtain a stay order from the Hon'ble High Court or any other Court."

What is the effect of this order? Laurent ordered for the applicant contended that this order embodied an internal arrangement between the defendants for running



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prima facie, the Receiver was directed to run the mills under the agreed scheme.

Pursuant to the terms of the compromise order on 14th January, 1934, the Receiver directed a lease in favour of the appellants in respect of the flour mill for a period of three years, and under that lease deed the appellants got possession from the Receiver and agreed "To yield up all the demised premises with all fixtures, improvements and replacements thereof in good and reasonable repair and condition in accordance with the lease covenants in that behalf herein contained upon the expiry of the term hereby created or the sooner determination of these covenants as herein provided." Whatever ambiguity there may have been, this lease deed says it is, for under the lease deed the appellants obtain the legal possession of the Receiver, take a lease under him, and agree to put him back in possession after the expiry of the lease. On 12th September, 1934, the appellants again applied to the court for extension of the lease for three more years thereby accepting his possession under the Receiver, through the court on 14th January, 1934, demanded that application on the ground that the lease was only a stopgap arrangement and that it was for the Receiver to make a final arrangement for the future under the supervision and direction of the Civil Judge under whose preliminary decree he derived authority. It is manifest from the affirmed order, that the Receiver was put in possession of the entire property of the defendants, that he was not empowered to run the mills personally, that by subsequent orders he was directed to lease out the mills to the parties in the manner prescribed and that under the first order he was to take over possession and make other arrangements for running the mills. In the premises, we find it very difficult to accept the argument of learned counsel that the Receiver was not put in possession of the mills, but the mills continued to be in the



provisions of the defendants. We hold on a construction of the relevant orders that the floor will of the appellants was also put in the possession of the Receiver and that the appellants were entering the said will under the compulsory formula.

The second contention of learned counsel for the appellants is that the Receiver appointed in the said order is to be a Receiver and the rights of the parties when the final decree was made by the Court. This contention leads us to the consideration of the question whether a Receiver appointed in a suit comes to be such automatically on the termination of the suit. Neither section 514 nor order XL of the Code of Civil Procedure prescribes for the termination of the office of receivership. We must, therefore, look for the relation elsewhere. Some of the authoritative textbooks on receivership may usefully be consulted in this connection.

In Halsbury's Laws of England, 3rd Edn., Vol. 12 (Lord Sumner), at p. 385 under the heading "Duration of appointment by court", the following statement occurs:

"Where a receiver is appointed for a limited time, as in the case of interim orders, his office terminates on the expiration of that time without any further order of the court, and if the appointment is 'until judgment or further order' it is brought to an end by the judgment in the action. The judgment may provide for the continuance of the receiver but this is regarded as a new appointment. If a further order of the court, though silent as to the receivership, is made in connection with a continuance of the receiver, it may operate as a discharge."

When a receiver has been appointed as an interim or temporary appointment without any limit of time, it is not necessary so provide for the continuance of his appointment in the final judgment. The

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determines the right to the possession of the fund or property held by the receiver, it is usually the case that such decree supercedes the functions of the receiver, since there is then nothing further for him to act upon, although it would seem to be still necessary that a formal application be made for his discharge. But when the court by its decree does not attempt to decide the main question in controversy and leaves the receiver's possession undisturbed, it cannot be held to have the effect of operating as a discharge, or of superseding his functions."

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Woodroffe in "The Law Relating to Receivers in British India", 4th Edn., states as p. 22 there:

"O XL. r. 1(a) now expressly provides that a receiver may be appointed whether before or after decree. As long as the order appointing a receiver remains unrevoked, and as long as the suit remains *in pendente*, the functions of the receiver continue, until he is discharged by order of the Court."

The law may briefly be stated thus: (1) If a receiver is appointed in a *suit pendente* judgment, the appointment is brought to an end by the judgment in the action. (2) If a receiver is appointed in a suit, without his tenure being expressly defined, he will continue to be receiver till he is discharged. (3) But, after the final disposal of the suit as between the parties to the litigation, the receiver's functions are terminated, he would still be answerable to the court as an officer till he is finally discharged. (4) The court has ample power to continue the receiver even after the final decree if the exigencies of the case so require.

Let us now apply the said principles to the facts of the instant case. The order appointing the Receiver did not expressly state that the Receiver's term would

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expans on the termination of the suit. Under the Preliminary decree the plaintiff became entitled to apply for the passing of the final decree for the sale of the property charged and also to get a personal decree against the defendants to set and find out for the balance of his claim remaining due after the sale. The preliminary decree expressly directed the Receiver to continue until discharged. Pursuant to the preliminary decree, a final decree for sale of the said properties was made, but the said decree did not in any way modify the direction given in the preliminary decree in respect of the Receiver. The combined effect of the two decrees is that the final decree did not terminate the suit, for the plaintiff would still be entitled to get a personal decree to use the sale proceeds were not sufficient to pay off his dues. It cannot, therefore, be said that the suit has been finally disposed of. Thus apart, the preliminary decree in express terms directed the Receiver to continue till they were discharged. In the circumstances, he is definitely of the opinion that the Receiver continued by the preliminary decree are entitled to function in this respect till they are discharged.

The third contention of learned counsel for the appellant raises the question whether in the circumstances of this case the Receiver could remove possession from the appellant only by executing a regular sale against him for eviction. The facts germane to this contention may be briefly recapitulated. On 14th January, 1985, the appellant executed a lease deed in respect of the flour mill in favour of the Receiver and there was no express clause therein that the lease would deliver possession to the Receiver of all the demand premises upon the expiry of the term of lease. The said lease was executed as a part of a compromise scheme for running the mill. The term of the lease had expired. Therefore the owner directed the Receiver to take possession of the property and auction the same to the highest bidder.

The question is whether under the circumstances a court can deprive the appellant under a summary process or whether it could only do so by directing the Receiver to file a suit for eviction. The material provisions of Order XL of the Code of Civil Procedure read:

1901  
"How  
This Law  
Pacts  
to  
Give  
Appellate  
Review  
without  
Delaying  
Just."

Rule 1. (1) Where it appears to the Court to be just and convenient, the Court may by order—

(b) remove any person from the possession or custody of the property;

(c) order upon the receiver all such powers, as to bringing and defending suits and for the collection, management, preservation, preservation and improvement of the property, the collection of the rents and profits thereof. . . .

(3) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right to so remove.

Under that Order, a receiver is an officer or representative of the court and he functions under its direction. The court may, for the purpose of enabling the receiver to take possession and administer the property, by order, remove any person from the possession or custody of the property. Sub- (3) of rule 1 of the Order limits the power in the case of a person who is not a party to the suit if the plaintiff has not a present right to remove him. But when a person is a party to the suit, the court can direct the receiver to remove him from the possession of the property even if the plaintiff has not a present right to remove him. In the present case, the appellant was a party to the suit with the court, through the Receiver took possession of the mill and thereafter the Receiver, during the course of the administration of



lease granted by a Receiver, the substance in possession gives an undertaking to the court that he would waive the premises in favour of the prospective lease if an fresh lease was granted on that favour, the court has given its assent the substance in its summary jurisdiction. The learned Judge observed at p. 38 thus:

"By giving an undertaking to the court that he would waive the mill in favour of the prospective lease and by holding in the construction the appellant, in our view, submitted himself to the jurisdiction of the court. The appellant could therefore be affected by summary process, issued out by a writ."

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So too, the High Court of Tennessee-Cashier in *Seaboard v. Official Receiver, Quilley District* (1) held that where the period of the lease granted to the receiver had already expired and as per the express stipulation in the lease deed the lease was bound to surrender possession of the property without raising any objection at all, the court could summarily evict him. The learned Judge made the following observations at p. 38:

"Even though the lease deed stands in favour of the receiver the express undertaking given by the leasee for an unconditional surrender of the property is in favour of the court. The summary enforcement of the undertaking thus taken by the court is only a step towards the discharge of the duties of the court in the management of the estate and it cannot be said that the court has lost its jurisdiction in that direction merely because the property has been in the possession of a leasee."

Further question would be redundant. These and such decisions seem to hold that a court exists even a lease from a receiver, whether he is a party to the suit or not, in exercising of its summary jurisdiction unless the lease

(1) 11 B. 1922 V.C. 25.

with  
them  
from 1891 to  
1902  
the  
appellants  
continued  
to possess  
the mill

expressly conferred a right of reversion under the lease held by the receiver. It is not necessary to demarcate the boundaries of the summary jurisdiction of a court in managing an estate through a receiver, for in this case we are clearly of the opinion that the appellants were in possession of the mill under an agreed and integrated scheme for running the mills by the different partners, though he was put in possession under a document described as a lease deed. In effect the Receiver, during the course of the management, entrusted each mill to one of the partners so that the mills might be properly worked under experienced hands. The appellants expressly agreed to give the Receiver in possession of the mill after the expiry of three years. No question of dividing the conflicting claims of a lease and a deed party arises in this case; nor is the court called upon to pronounce on the vested rights of a lease in conflict with those of the Receiver. But this is a simple case of a court in the course of its administration of the estate through the agency of a Receiver making a suitable provision for the running of the mills. As the agreed term had expired, the court, in our view, could entirely disown the appellants' attempt to put the mill in the possession of the Receiver.

Lastly it has been brought to our notice that an application for the discharge of the Receiver is pending in the lower court. Any observations that we have made in this judgment are not intended to affect the merits one way or other in the disposal of that application. That application will be disposed of in accordance with law.

In the result, the appeal fails and is dismissed with costs.

*Appeal dismissed.*



## APPELLATE CIVIL

*Before Mr. Justice Begg and Mr. Justice Edmund Peacock.*

SARJIT SINGH and others (Appellants)

vs.

1915  
April 27

DEPUTY DIRECTOR OF CONSOLIDATION,

JALNPUR and others (Respondents)

*Question of time with setting aside order for 30 days (Continuance of Order.)* Can be dismissed on basis of being beyond 30 days without considering cause of delay, if the case opens on obtaining a certified copy of judgment or order required and the 34 days time required for giving notice to the Standing Council is to be included in computing limitation.

The questions that arose for determination on the Special Appeal were whether the writ petition can be dismissed on basis mainly on the ground that a period of 30 days has elapsed since the date of the impugned order without considering the cause of delay and whether in computing the period of limitation of 30 days which is the constitutional period allowed by this Court a party is legitimately excused, so far as the time spent in obtaining a certified copy of the impugned order or judgment is by law and also to include 34 days time required for giving notice to the Standing Council under rules of the Court.

The Court after considering in detail Held, (1) that it will be erroneous to dismiss a writ petition on basis mainly on the ground that a period of 30 days has elapsed since the date of the impugned order without considering the proper reference to circumstances of the petition and applying rules laid in other cases that are alleged to have involved and caused delay.

(2) that where the Court is of opinion that application could not be filed within the period of 30 days owing to circumstances which was beyond the control of the parties, substantial or other reasons which in equity would induce the Court to condone the delay, there is no bar as far as the determination of such an application.

(3) that a petitioner filing a writ petition should be considered entitled to exclude the period spent in obtaining a copy of the impugned judgment or order.

1961  
SPECIAL  
APPEAL  
NO. 123  
IN  
THE  
SUPREME  
COURT  
OF  
INDIA  
BETWEEN  
THE  
GOVERNMENT  
OF  
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AND  
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(1) that the party prosecuting the application would also be entitled to exclude the entire period of fourteen days (required for giving notice to opposing Government) excluding the day on which the order was served;

(2) that even though the order of the learned single Judge was of a discretionary nature, the discretion vested in the Court was not exercised on improper judicial and equitable principles.

Case-law discussed.

Special Appeal No. 123 of 1960, from the order of Bheem, J., dated 16th April, 1960 in Civil Misc. Writ No. 123 of 1960.

The facts appear in the judgments.

A. F. Pandey, for the appellants.

The judgment of the Court was delivered by—

BHEM, J.—This appeal arises out of a writ petition which was directed against an order of the Deputy Director of Consolidation, Jabalpur, dated the 6th of January, 1960. The purpose of the writ petition was to have the said order quashed by this Court. In view of the fact that the sole argument that has been heard by us at this stage relates to the question of limitation, we propose to give in this judgment only those facts which are relevant to this particular point. It may be mentioned that all these facts are admitted by the parties before us, and are also borne out by the record of the case. The endorsement at the back of the certified copy of the order which was filed along with the writ petition shows that the application for a copy of the order sought to be impugned was given on the 9th of January, 1960, and that the copy was ready for delivery on the 15th of January, 1960. It would appear that under Chapter XXII, rule 1 sub-rule (2) of this Court, it was incumbent on the petitioner to serve a notice of the motion on certain persons mentioned therein. To comply with it, a notice was served on behalf of the applicant on the Standing Counsel as required under Chapter XXII, rule 1 sub-rule (4) on the

24th of April, 1910. Thereafter on the 25th of April, 1910 the present application was filed in the High Court. On the same day the learned Judge dismissed the said application on grounds on the ground of limitation. He did not go into the merits of the case. The order passed by the learned Judge is a final one and runs as follows:

"This application appears to be belated time, the last impugned order having been passed on the 24th of January, 1910. More than 30 days have elapsed since then."

"The petition is accordingly rejected."

Disatisfied with the said order the prisoners filed this special appeal. As many or less similar orders were passed by the same learned Judge in a large number of applications, all these applications were considered. All of them have been heard by us along with this application. We however, propose to make this appeal the leading case, and to give our reasons exhaustively in our judgment in this case. Our judgment in this case will govern other cases in which we shall merely refer to this judgment for the reasons in support of our view in those cases.

Having heard learned counsel for the parties at considerable length, we are of opinion that this appeal should be allowed. Learned counsel appearing for the appellants has argued before us that the order of the learned single Judge dismissing the writ petition was merely on the ground of limitation without going into the merits of the case is an unjustifiable one. In this contention he has argued that the learned single Judge should have taken into consideration the fact that the prisoners had applied for a certified copy of the judgments, and that five days were taken in obtaining the said copy. He has further invited our attention to the fact that under the rules of this Court it was incumbent

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1961  
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 Appeals  
 Nos. 104, 105 &  
 106 of 1960  
 (1961)  
 104, 105 &  
 106

on the petitioner to give a notice of the motion on the Standing Counsel, and that 14 clear days notice was necessary in that connection. If the period spent in obtaining a certified copy of the writ order, and 14 days time required for giving notice to the Standing Counsel under the Rules of this Court is taken into consideration, then the application would be admittedly within time. The learned counsel has, therefore, argued that the application should not have been dismissed summarily on the ground of limitation. The two questions, therefore, that have arisen before us are, first, whether in a case like the present a party is entitled to the exclusion of time spent in obtaining a certified copy of the order, and, secondly, whether a party is further entitled to the exclusion of "upstart" time required for giving notice to the Standing Counsel under Chapter XXII, rule 1, sub-rule (4) of the High Court Rules.

Before, however, discussing these two questions we may make some general observations which may be helpful in the determination of the matter. The present application was filed under Art. 226 of the Constitution of India. The relief provided under this Article is a purely discretionary one. Neither in the Constitution of India, nor in the Rules framed by the High Court is there any provision prescribing any period of limitation for the filing of an application under Article 226 of the Constitution. Further even after the coming into force of the Constitution of India, there has been no amendment of the Limitation Act for the purpose of providing any period of limitation for filing such applications. It appears so in that the reason why no such provision is made in the Constitution or under Art. 226, or even in the rules framed by the High Court in respect of the writs is obvious. The relief being a purely discretionary one, it was also

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left to the discretion of the High Courts in developing rules of procedure governing this aspect of the matter. As the whole matter was sought by the Legislature to be put in the realm of discretion the High Courts would while dealing with it, be guided by principles of justice, equity and good conscience. Approaching the matter from this point of view, the various High Courts have established procedures prescribing periods of limitation that should be considered reasonable, fair and proper by them, and which should determine the suit so far as the particular High Court is concerned. In the Allahabad High Court, there has been a long standing practice established by precedents not in evidence, with persons which are filed 90 days beyond the date of the order sought to be set aside. This practice is now so well established as to justify one in setting the said period of 90 days as the conventional period of limitation observed in this Court. The practice is founded on the consideration that such proceedings are analogous to appeals in so far as they constitute a reconsideration of the orders passed by the authorities concerned. The case of the Allahabad High Court which is regarded as the foundation of this practice in this Court is *Munsey v. The Board of Revenue & P. Allahabad* (1). In this case a Bench of this Court quoted a passage from *Ferris on Extraordinary Legal Remedies*. In support of its view that 90 days period should be considered as the reasonable period for filing such applications. The relevant passage runs as follows:

"So it has been held, by analogy to appeal, that the application must be made within the time for prosecuting an appeal, unless the person shows circumstances of a special nature requiring an extension of time."

THE  
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1961

Relying on this passage the Bench laid down the law as follows:

"We consider that this is a correct statement of the law and in our opinion a period of 90 days, which is the period fixed for appeals to this Court from the judgments of courts below, should be taken as the period for application for the issue of a writ of certiorari, and that same can be extended only when circumstances of a special nature which are sufficient in the opinion of the Court, are shown to exist."

Thus our no-doubt lays down the period of 90 days as the basic period of limitation for filing a writ of certiorari. It is not, however, in our opinion, a *straw* for the proposition that in computing the said period every factor that might have resulted in unexcusably delaying the filing of an application beyond the period of 90 days should be ignorantly excluded from consideration. On the other hand, this case well lays down that when circumstances of a special nature are made out then extension should be granted. Further, this case proceeds on the basis of analogy provided by an appeal. If the said analogy is pursued further and the exceptions relating to the basic period of limitation provided for appeals and other proceedings laid down in the Indian Limitation Act are examined, then, as the subsequent portion of our judgment indicates, the appellants would be entitled to the exclusion of the period spent in obtaining a copy of the order as well as of the period required for giving notice of motion.

That the period of 90 days which is the conventional period of limitation established in this Court is not so rigid as to exclude consideration of other matters will also be borne out by two other cases of this Court,



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for refusing to grant an application for the issue of such writs. There may, however, be circumstances which would make the High Court take a more lenient view and accede to the application, even after delay (see *Hartmann C*). In this case delay was condoned on the ground that the applicant was seeking his remedy from the General Board of Revenue under erroneous advice.

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The law on the point is summarized on the same page as follows:

"The other consideration is that in equity itself the doctrine of laches is not an arbitrary or a technical doctrine. The summary of the law by Sir James Farnes, in *London Petroleum Co. v. Wood* deserves repetition:

"Where it would be practically unjust to give a remedy either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not wronging that remedy, put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be granted, in either of these cases, lapse of time and delay are most material. But in every case if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances above important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice to require, in giving the one remedy or the other to be in justice to the remedy."

Apportionment according to laches according to the rules stated above the more lapse of time, as Lord Eversham observed in *Carver v. Leinster* (1) is

judicially acquiescence is not to be measured by any rule of the former's bodies.

"The courts in India have to develop the law by further analysis of each case and by finding out whether the facts call for a denial of relief to the applicants."

In paragraph 176 of Ferris book entitled "Essentials of Legal Research" (1956 Edition) it is stated that:

"There is no hard and fast rule by which to determine whether the right to bring certiorari is barred by laches, as the issuance of the writ is largely a matter of sound discretion. The aggrieved party should have a reasonable time within which to make application."

In view of the above legal position it appears to us to be incorrect to throw out a writ petition as time-barred, on the ground that a period of 90 days has elapsed since the date of the impugned order without instituting the petition, sufficiency or reasonableness of the petition, and applying our mind to other factors that are alleged to have intervened and caused delay. The conventional period of limitation laid down by this Court is based on the principle of laches which itself is the offspring of the twin maxims of equity—the first being that equity helps the vigilant, and the second being that delay defeats equity. When the Court is of opinion that application could not be filed within the period of 90 days owing to certain causes which were beyond the control of the party concerned, or other reasons which in equity would induce the Court to condone the delay, it appears to us that there is no bar in law to the entertainment of such an application. Where, however, an application is made beyond the period of 90 days, the party making the

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application under no obligation to provide an adequate explanation of the same. The material provided in this report should be such as to enable the Court, after the receipt of the other evidence, to arrive at a sufficient basis for finding the facts.

In the present case, the two circumstances alleged are (i) that the party had applied for a certified copy of the impugned order and (ii) that the party had given notice of its motion to the Standing Council as required by the rules of this Court. We shall now proceed to discuss each one of these separately. In the light of the observations made by us above, it is obvious that the main question on which our decision would have turned is whether or not there are probable reasons for allowing the petitioners to exclude the certificate in favour of either or both of these facts.

As far as the first question, namely, the petitioners in obtaining a certified copy of the order which is sought to be challenged, is concerned, it would be relevant to refer to the provisions of Chapter XXII, rule 1, sub-rule 1(a) which specifies the documents which should accompany an application under Article 226 of the Constitution of India. Sub-rule 1(a) of rule 1 of Chapter XXII of the High Court Rules runs as follows:

"Where documents in relation to any judgment or order of a court or an officer thereof are applied for, the same shall be accompanied by a copy of such judgment or order and where there has been an appeal or revision from such judgment or order the by a copy of the judgment or order of the higher court."

Under the above rule which is made by the Court and which has the force of a statute so far as this Court is concerned it is obvious that an application under Article 226 of the Constitution of India by the petitioners would not have been maintainable in this Court

value, it is accompanied by a copy of the judgment or order of the Deputy Director of Consolidation. A period of no time is allowed to a petitioner to enable him to make preparations for filing a writ petition in this Court and to seek proper legal advice on appeal of the judgment or order, which is sought to be set aside. Before the petitioner could seek any such advice it would be necessary for him to obtain a copy of such judgment or order. Again, according to the learned Justice on the fact that the filing of a copy of such judgment or order is made necessary by the rules of this Court themselves, the necessity for obtaining a copy of such judgment or order also arises out of the fact that the securing of such copy is necessary in order to seek necessary legal advice and to make proper preparations for the filing of the application. Therefore, in the absence of a copy of such judgment or order it was not possible for the petitioner to make proper preparations for filing the application, and even if he had made such preparations, it was not possible for him to file an application in this Court without attaching a copy of the said judgment or order to the application, which was sought to be filed by him.

In this connection it would be relevant to refer to the provisions of the Limitation Act dealing with the suspension to the period of limitation prescribed therein for various proceedings that are contemplated by that Act. The period of limitation had done in the first Schedule of the Act is the statutory period of limitation. That is, no doubt a fixed and an inflexible period. In spite of it, the Legislature considered that there were certain equitable considerations which should entitle a part to the extension of certain periods of time in the computation of the least statutory period. It is in view of these equitable considerations that the Limitation Act has sought to create certain



just would be entitled to exclude the period spent in obtaining a copy of the judgment or order sought to be impugned even though the procurement of a copy of the said judgment or order is not necessary for the purpose of filing the appeal or application referred to above. The view of the case is based upon the ground that it is necessary to obtain a copy of the judgment or order sought to be challenged for the purpose of enabling the party to make up its mind whether it should feel, or rely against the order or not. So far as the Courts in India are concerned, the leading case on the above point is reported in [*Abdool M. Sayy v. U. S. Civil Serv. (1)*]. In this case three Lordships of the Privy Council laid down that in reckoning the time for presenting an appeal, the time required for obtaining a copy of the decree and judgment must be excluded, even though by the rules of the Court it is not necessary to file such copies with the memorandums of appeal. The same view was taken in a Full Bench case of the Allahabad High Court in *Kashir Sugar Works v. B. C. Sharma (1)* as well as in a Division Bench case of the Allahabad High Court in *Municipal Board v. Shyamala Das (2)*. Approaching the matter therefore, from the equitable point of view the present case is a much stronger one for the exclusion of time taken in obtaining a copy of the impugned judgment or order, as the procurement of such a copy with the application is an imperative requirement under the rules framed by this Court. Under the circumstances, we are of opinion that in computing the period of limitation of an appeal which is the conventional period observed by this Court, a party should be held to be legitimately entitled to exclude the said period.

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under the Limitation Act. A case under the Limitation Act is other all governed by the rigid rules of law which are inflexible. On the other hand, as far as the conventional period of limitation relating to writ petitions is concerned, it is not governed by any such rigid rules of law. The question in such a matter is drawn exclusively within the realm of equitable jurisdiction of the Court and, therefore, in considering the matter, the hands of the Courts are not tied down by the shackles of law. It can, therefore, move more freely, and has a wider range within its reach. In such a case, there fore there is nothing to prevent a Court from taking into consideration every equitable circumstance that might have resulted in causing unavoidable delay in filing the writ petition. The principle on which the Limitation Act proceeds is the principle of public policy which is a principle of narrower application. On the other hand, the principle on which the Court in such a matter proceeds is the principle of equity which is a principle of much wider application. In the latter case it is open to the Court to avoid the strictness of the rule according to the particular circumstances of such case.

The inequitable consequences of not excluding the period spent in obtaining a copy of the order or judgment sought to be impugned will be apparent by taking the instance of a case in which a party, in spite of due diligence, is unable to obtain a certified copy of the said order or judgment within a period of 90 days. Supposing that the office to which an application for copy has been made closes the copy after a period of 90 or 100 days. In such a case the party would be detained altogether from filing the writ petition, as the Rules of Court require that the filing of such a copy along with the petition is a condition precedent to the maintainability of the petition. The



result would be that whenever an authority does not issue, that its order or judgment be challenged, it has only to instruct its office to delay the preparation of the copy, beyond a period of one or 90 days with the result that the order of the said authority, however erroneous, legal or perverse would become impregnable and incapable of being challenged in the High Court by means of writ proceedings. A party would then be driven at the mercy of the Copying Department and would be penalized for no fault of his own. This would be a highly inequitable situation, and would be against all stream of justice and fair play. For the above reasons, we have no hesitation in holding that a petitioner filing a writ petition should be considered entitled to exclude the period spent in obtaining a copy of the impugned judgments or orders.

The next question that has arisen in the present case is whether the petitioner should be further entitled to exclude the period of 14 days which is the prescribed period for the service of notice upon the Standing Council under Chapter XXII, rule 2, sub-rule (4) of the Rules of this Court. Chapter XXII, rule 1, sub-rule (4), runs as follows:

"Where the Government or an officer or department of the Government, or a court, or a Tribunal, Board, Commission or other body appointed by the Government is an opposite-party named in the application, the applicant shall before presenting the application serve notice of motion upon the Government Advocate in criminal matters and upon Standing Council, if he is authorized to receive notice on behalf of such opposite-party in other matters along with as many copies of the application, affidavits and other papers as comprising it as may be equal to the number of parties to be represented by the Government

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Advocate or the Standing Council, as the case may be, and one copy for the use of the Government, Advocate or the Standing Council writing therein the day for the making of the motion. The application shall indicate that such notice of motion has been served. There shall be at least fourteen clear days between service of notice of motion and the day named therein for the making of the motion except where the matter is one of urgent, and the permission of the Court is obtained for making such motion earlier."

It is conceded that the above rule applies in the present case. The most important point to notice in this connection is again the fact that service of motion is a part of the mandatory requirements of the above rule which has the force of law in this Court. A party must have prepared his writ petition within the prescribed period of 90 days which is the constitutional period of limitation. All the papers connected therewith must also have been obtained by it. In spite of it, according to the above mentioned rule, the party is not required to present his application until he gives fourteen days' notice of the presentation of the case to the Standing Council. Judging the matter from an equitable point of view, we have no doubt in our mind that a party should be entitled to the exclusion of the period provided, of course, that the required notice has actually been given before the period of 90 days rounded after excluding the period spent in obtaining a copy of the suggested judgment or order has expired. In this connection again it would be relevant to refer to our earlier order in which the exclusion of this period must be found. The first is "*Shree Gururaj Narayana Gurjar*" (for out of the court will propagate no more, no act of the court will have no more). The second is "*Gov.*

the *Capi Ad Impeachment* (The law does not leave a man in impeachment. The law does not compel a man to do what he cannot possibly perform). The requirement that fourteen days notice of motion shall be given to the Government Counsel under the above rule is a requirement under a rule which has the force of law in the Allahabad High Court, and the rule in question was framed by this Court. It is, therefore, not, but that a party, who is ready with his application within the conventional period of limitation prescribed by this Court, should not be made to suffer as a result of the action of this Court requiring him to do certain things, and before he can file it.

The urgency of the problem will be evident if we contemplate a position where the Court cannot do anything to require batters to file as the period of notice, presently of a period of 90 or 100 days for each notice. It is, in fact, open to this Court to extend the above rule on this feature. The result then would be that the party would never be able to present a petition which requires each notice within the conventional period of 90 days. The consequence would be that every case pending in which subrule (6) of Rule 1 of Chapter XXII applies, would have to be dismissed in this Court. A party would thus be deterred altogether from seeking this remedy relied on the doors of this Court, and the entire provisions of Article 226 of the Constitution of India would stand completely nullified in each case.

In that connection an argument was advanced before us on behalf of the respondents that in this rule the expression relating to the possession of an application is used in a sense different from the expression relating to the service of notice of motion. It was further argued that what was really prohibited by this rule was not the communication of the application but the

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making of the motion. A party could therefore, present the application within the usual period open to him. It was only barred from making an motion on this Court on request of a writ after the expiry of fourteen days. In this connection a distinction was sought to be drawn between the presentation of the application and the notice of motion, and it was strenuously contended before us that the making of the motion refers to a case where a party seeks some action, on the part of the court, apart from the presentation of the application. The argument is an ingenious one and has also the appearance of plausibility. On a closer scrutiny of it, however, we are not disposed to accept it. No doubt the bare act of presentation may not be identical with the act of making the motion in every case. In the context, however, in which the words "presenting the application" are used in sub-rule (1), it appears to us that the said expression incorporates within it the idea of making the motion. That interpretation would be strongly supported by a reference to the last sentence of this very sub-rule which requires a party to name the day for the making of the motion at the time of the service of notice of motion. If the party has already presented the application in court and has parted with the necessary papers, it is not possible for it to present the same papers again on the day named by it. It would, therefore, be unable to make the motion on that day. As a *res* quod, the party having already parted with the necessary papers, the matter would be out of its hands.

The same interpretation is supported by a reference to Chapter XI, rule 1 of the Court which lays down that "Every memorandum of appeal or objection under rule 22 or 24 of Order XXI of the Code and every application shall be presented for admission on



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purpose of seeking an order from the Court and not just doing the bare act of presentation.

It would also be relevant in this connection to refer to *Whitaker v. Laws of England* (formerly *Lalor*) Volume 11, page 53 footnote (1) which states that the word *present* is to be treated as an application to show cause as a matter.

Our attention was also drawn by the learned counsel on behalf of the applicant to Section 28 of the Code of Civil Procedure which provides that "Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed". Similarly Order 4, rule 1 relates to the presentation of a plaint and Order 33, rule 1 relates to the presentation of an application for permission to sue as a pauper. Reference in this connection may also be made to Chapter XV, rule 4, sub-rule (1) of the Rules of this Court which lays down that every suit is to be instituted by the presentation of a plaint to the Judge appointed to receive applications. On behalf of the applicant it is suggested that in view of the difference in the context of the expression relating to presentation in these provisions the said expression may bear a meaning different from the one it has in Chapter XXII, rule 1(1) which relates to the presentation of writ petitions.

Our attention in this connection was also drawn to Order 6, rule 1 of the Supreme Court Rules in which the making of a motion is treated as identical with the presentation of an application. The meaning of the expression "presentation of the application" would, therefore, depend upon the context in which the said expression is used bearing in mind the nature of the application which is sought to be presented and the principle approaching the matter from that standpoint.

in our opinion the requirement relating to the present state of the application in Chapter XXII rule 1, sub-rule (3) of the High Court Rules is to be interpreted as inconsistent with the making of motion, or rather the motion should necessarily be deemed to incorporate the latter. This interpretation would also be more conducive to convenience in so far as it would enable a party to raise the due for the making of the motion. This interpretation, therefore, is to be preferred as it would facilitate the smooth working of the rule in practice and achieve the purpose which the rule was designed to achieve.

It may also be noted that the rule in question states that "there shall be at least fourteen clear days between service of notice of motion and the day named therein for the making of the motion". The use of the word "clear" in this connection puts it beyond doubt that the fourteen of the rule intended that in computing the period the date of service of notice was to be excluded.

In *Wisevick's Interpretation of Statutes* (Fourth Edition) at page 156 the meaning of the expression "clear days" is explained thus:

"Again, when so many 'clear days', or so many days 'at least' are given to do an act, or 'not less than' so many days are so intended, both the terminal days are excluded from the computation."

In the Rules of the High Court the method of reckoning of time in such cases is prescribed in Chapter 1, rule 4 which provides as follows:

"Where any particular number of days is prescribed by these Rules, the time shall be reckoned exclusively of the day day, and inclusively of the last day, unless the last day shall happen to fall on a day on which the office of the Court are closed.

rule  
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XXII  
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sub-rule (3)  
of the High Court  
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as inconsistent with  
the making of motion  
[Ag.]

appeal  
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 (app.)

in which case the time shall be reckoned exclusively of that day, also and of any succeeding day, in days on which the office of the Court is closed to be closed."

The words, therefore, is that, the party presenting the application would be entitled to exclude the entire period of fourteen days, excluding the day on which the notice was served.

In this connection, it will be relevant to observe that the Limitation Act also contains an analogous provision enabling a party to exclude the period of notice required in cases of writs. Section 13, sub-section (2) of the Limitation Act runs as follows:

"In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded."

Although writ proceedings are for the purpose of fixing the conventional period of limitation treated as analogous to appeals, they are really proceedings in the exercise of original jurisdiction. The array of parties is a different one. Fresh material is introduced into the case by the requirement of affidavits or affidavits which are to be filed with it. Fresh documentary evidence may also be filed. In fact, Rule 3 of Chapter XXII of the Rules of Court expressly mentions the production of fresh evidence by laying down as follows:

"All questions arising for determination under this Chapter shall be decided ordinarily upon affidavits, but the Court may direct that such questions as it may consider necessary be decided on such other evidence and in such manner as it may deem fit and in that case it may follow such procedure and may pass such orders as may appear to it to be just."



As original proceedings, therefore, they are on the same, all cases and the provisions of section 15(7) of the Limitation Act can be referred to for guidance in this regard by way of analogy. As already observed the provisions of Chapter XXII, rule 1(4) have the force of an enactment so far as this Court is concerned. Applying, therefore, the analogy of section 15(2) of the Limitation Act, the period of notice which is required under Chapter XXII, rule 1(4) to be given to the Standing Council should be excluded in computing the one-year period of limitation prescribed for writ petitions. In fact, the exception provided in the Limitation Act was as already observed, themselves based on equitable principles which are engrafted to the statute for the purpose of softening the rigour of the literal article which prescribes the strict periods of limitation for proceedings mentioned therein.

It would also appear that the Laminations Act itself did not intend to confine the operation of these exceptions within the four corners of the law of Laminations and down in the Laminations Act. A perusal of section 26(2) of the Indian Laminations Act (IX of 1908) would indicate that unless expressly provided otherwise the provisions contained in sections 2, sections 4 to 15 and section 22 would also be applicable to any special or local law, promulgating the period of limitation or any suit, appeal or application. In the present case the relevant provisions with regard to the exclusion of time spent in obtaining copy of judgment or order is contained in section 17 and with regard to the sufficiency of one order in complying with the requirements of service is contained in section 13. Both these sections were, therefore, specifically mentioned in section 26 of the Laminations Act. Both of them were therefore, intended by the framers of the Indian Laminations Act to be extended to special and local laws as well. The







## SUPREME COURT

## APPELLATE CRIMINAL

Before the Hon'ble Mr. Justice Gopabandhu, the  
Hon'ble Mr. Justice Jeejeebhoy, the Hon'ble Mr. Justice  
Munshi, the Hon'ble Mr. Justice Das Gupta  
and the Hon'ble Mr. Justice Raynor

1951  
March 15

HARNAM DAS

v.

STATE OF UTTAR PRADESH

[On Appeal from the High Court at Allahabad]

**Falsification of publications which are religious or tend to promote religious feelings—Contemptuous order of jurisdiction—Whether staying process of the High Court is liable challenge of High Court's power to bring order on order of contempt—Code of Criminal Procedure 1908, s. 104, 104A and 104B.**

(For Appellant, Das Gupta, J. present)

The power of the High Court under s. 104B of the Code of Criminal Procedure is limited to punishing the grounds of offence of the State Government on the publication or sale of any religious or tending to promote religious feelings or to be published or sold in any form, of persons 1908, 1904, or 1905 of the Penal Code. Whereas if the State Government does not come in the order the grounds of an offence, the order of the High Court may be an order on that ground alone. The High Court, in such a case, has no power to punish for such violation of the publication is or has published under the persons 1908, 1904 or 1905 of the Penal Code.

*Raynor v. Emperor* (7), *Prasad Kumar v. Chief Justice* (2), *M. P. Prasad v. State of Uttar Pradesh* (3) and *State of Uttar Pradesh v. State of G. P.* (4) overruled.

*State of Uttar Pradesh v. State of Uttar Pradesh* (5) approved.

[ 211 220 230 240 250 260 270 280 290 300 ]

(1) 1951 (2) 1951 (3) 1951 (4) 1951

THE  
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[The Hon. Gurus.]—That the Government should record the grounds of an opinion is undoubtedly a salutary provision. Undoubtedly, as it does, the rule of an advisory order. There is, however, no justification for the view that the High Court can act as a court in a position to interfere with the grounds of an opinion issued by the State Government. The decision in A. 103 of the Code of Criminal Procedure on the 20th July 1951 of the High Court is not to set aside as a particular case the grounds stated by the Government for forming an opinion on certain facts to set whether the opinion formed was correct. The problem also does not arise and the only way to manage the document with a view to depublishing the opinion whether the publication falls within or is punishable under any one or more of sections 153-A, 153-B and 155 of the Penal Code.

Criminal Appeal no. 34 of 1954, from the judgment and order dated the 10th May, 1955 of the Allahabad High Court in Criminal Miscellaneous no. 3206 of 1955.

The facts appear in the judgments.

For the Appellant: Advocate (S. E. Kishor and G. P. Rao, Advocates, with him) for the appellant.

G. C. Mishra and C. P. Rao, Advocates for the respondents.

The following judgments of the Court were delivered as follows:

SEKHAR, J.—The only question that was argued in this appeal is substantially one of construction of section 154-D of the Code of Criminal Procedure.

The appellant was the author of two books in Hindi called *Yeh Mr. Khanda Part I* and *Waadika Narmad* *Yeh Mr. Khanda* which he had published in April, 1953. On 26th July, 1955, the Government of Uttar Pradesh, the respondent in this appeal, made an order under section 154-A of the Code prohibiting these books which were thereupon seized and taken away. That order so far as material, was in the following terms: "In exercise of his powers conferred by section 154-A of

In Code of Criminal Procedure . . . . . The Government is pleased to decline the books . . . . . Subjected to Government on the ground that the said books contain matter, the publication of which is punishable under sections 153-A and 295-A of the Indian Penal Code." It is the validity of that order that is challenged in the present appeal.

Section 98-A under which the order was made, so far as relevant, is in these terms:

"Where any newspaper, or book . . . . . or any document . . . . . appears to the State Government to contain any sedition matter or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of the subjects of India or which is deliberately and maliciously intended to outrage the religious feelings of any such class by attacking the religion or the religious belief of that class, that is to say, any matter the publication of which is punishable under section 124-A or section 153-A or section 295-A of the Indian Penal Code, the State Government may, by notification in the Official Gazette stating the grounds of its opinion, declare . . . . . every copy of such book . . . . . to be forfeited to Government."

Two things appear clearly from the terms of this section. The first thing is that an order under it can be made only when the Government forms a certain opinion. That opinion is that the documents concerning which the order is proposed to be made, contain "any matter the publication of which is punishable under sections 124-A or section 153-A or section 295-A of the Penal Code." Section 124-A deals with order out matters, section 153-A with matters promoting enmity between different classes of Indian citizens and

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sections 298 A with meaning, violating the religious or religious beliefs of any class of such citizens. The other thing that appears from the sentence is that the Government has to state the grounds of its opinion. The order made in this case, no doubt, stated that in the Government's opinion, the books concerned contained the publication of which was punishable under sections 295-A and 298 A of the Penal Code. It did not, however, state, as it should have, the grounds of that opinion. So it is not known which communication was alienated from each other or whose religious beliefs had been wounded according to the Government, nor why the Government thought that such alienation or offence to religion had been caused.

New section 25-B gives the person interested in the books or documents forfeited, a right to apply to the High Court to set aside the order made under section 25-A, and section 25-D specifies the High Court's duty on such an application being made to it. These two sections will have to be separately considered in the next and as they along with section 25-C, are set out below:

**Section 99-B.** Any person having any interest in any newspaper, book or other document in respect of which an order of forfeiture has been made under section 99-A, may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document in respect of which the order was made, did not contain any seditious or other matter of such a nature as is referred to in subsection (1) of section 99-A.

Section 99 C: Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges.



Section 94-D (1). On receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained sedition or other matter of such a nature as it referred to in sub-section (1) of section 94-A, set aside the order of forfeiture.

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We think it fairly clear from these sections that the ground on which an application can be made under section 94-B is the ground which, if established, would require the High Court to set aside the order under section 94-D.

The appellants had moved the High Court as Allahabad under section 94-B to set aside the order of forfeiture of his books. It seems to have been contended in the High Court that the order of forfeiture should be set aside on the ground that the grounds of the Government's opinion had not been stated. With regard to this contention the High Court observed, "The requirement to state the ground is mandatory & mere recitals of words of the section will not do. But as has been held by a Special Bench of this Court in *Saghai v. Emperor* (1) with which we respectfully agree, the High Court is, in view of the provision of section 94-D of the Code of Criminal Procedure, precluded from considering any other point than the question whether or not the documents come within the mischief of the offence charged." In this view of the matter the High Court refused to set aside the order on account of the omission to state the grounds of the opinion. The High Court then proceeded to examine the books for itself and found that their contents were "obscene and highly objectionable" and dismissed the application observing that the appellants had "utterly failed to show that the books did not contain matters which promoted feelings of hatred and hatred

(1) A.I.R. 1951 101, 125.





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merely mentioned here must, for the reasons stated, refer only to such matter on which for the grounds stated by it, the Government's opinion has been based.

The proposal now in section 99-B is concerned with the same order of reference. An order concerning placed by section 99-B is made on an application under section 99-A. That order must therefore accept or reject the grounds on which the application under section 99-A was made. Those grounds, as we have seen, are confined to challenging the propriety of the grounds on which the Government's opinion (standing in the order, was based. The words which we have earlier quoted from section 99-A occur substantially in the same form in section 99-B. The scope of the two sections is identical. The common words occurring in them mean, therefore, have the same meaning in both. They must hence, in section 99-B also mean such matter on which for the grounds stated by it the Government's opinion was based. They cannot mean, as the High Court thought, any matter whatsoever, even points of the Government's reasons for making the order, which as the High Court's opinion would have justified it.

This view of the matter also explains why section 99-A requires the Government to state the grounds of its opinion. The reason was to enable the High Court to decide the order of reference if it was not satisfied of the propriety of those grounds. If it were not so, the grounds of the Government's opinion would serve no purpose at all. This would specially be so in section 99-C provides that an order of reference cannot be called in question except in accordance with the provisions of section 99-B. If the order could be upheld as the High Court seems to have thought on grounds other than those on which the Government based its opinion, there would have been no need to provide

that the grounds of the Government's opinion should be stated; such grounds would then have been wholly irrelevant in reaching the verdict of the court.

The acceptance of the interpretation put by the High Court would lead to a result which, in our view, would be wholly unwarranted. The order of Parliament with which section 29-D is concerned is indistinguishable in order under section 91-A. Must an order under that section be necessarily an order of the Government and not any other? Take a case where the Government making the order states the grounds of its opinion on which the order is based. Suppose the Government says that the expression of view A in the book concerned offends the religious beliefs of community X. Now suppose that in an application made to an *ex parte*, the High Court was not satisfied that view A would offend community X, but thought that another expression of view A in the same book which we will call B, offended the religious beliefs of a different community, say community Y. If in such a case the High Court upheld the order, which, if the view of the Court below is right, it could do there would really be an order of Parliament made by the High Court and not by the Government, because the Government is using the grounds of its opinion had not, when it did not say so, thought that view B could offend the religious beliefs of community Y. We think it impossible that the scheme contemplated such a result; the Code makers provide for an order of Parliament being made by the High Court. We are, therefore, of opinion that under section 29-D it is the duty of the High Court as an order of Parliament if it is not satisfied that the grounds on which the Government formed its opinion that the book concerned contains the publication of which would be punishable under any one or more of sections 124-A, 125-A or 295-A of the Penal Code only.

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privately that opinion. It is not its duty to do more and to find for itself whether the book contained any such matter whatsoever.

What then is to happen when the Government did not state the grounds of its orders? In such a case if the High Court upheld the order, it may be that it would have done so for reasons which the Government did not have in contemplation at all. If the High Court did that, it would really have made an order of forfeiture itself and not upheld such an order made by the Government. This, as already stated, the High Court has no power to do under sections 94-D. It seems clear to me, therefore, that in such a case the High Court must set aside the order under section 94-D, for it can not then be satisfied that the grounds given by the Government justified the order. You cannot be sure that about a thing which you do not know. This is the view that was taken in *Drum Ranges Ghose v. State of West Bengal* (1) and we are in complete agreement with it. The present is a case of that kind. We think that it was the duty of the High Court under section 94-D to set aside the order of forfeiture made in this case.

We accordingly allow the appeal and set aside the Government's order of forfeiture dated 16th July, 1961. The appellants will be entitled to a return of all books, documents and things seized under that order.

**Das Gupta, J.**—By a notification dated 16th July, 1953, the Uttar Pradesh Government acting under section 94-A of the Code of Criminal Procedure declared the books "Sikh Van Khanda, Part I" and "Shikharin Naxal Sikh Van Khanda" which had been published by the appellants Harman Das in April, 1953, declared to government on the ground that these books contained matters the publication of which was punishable under section 123-A and sections 291-A of the (1) (1953) 1 C.W.N. 20.

Indian Penal Code. The High Court held on an examination of the books that they closely came within the mischief of sections 124-A and section 295-A of the Indian Penal Code. Accordingly it held that the order of the State Government forbidding the two books, is a restraint on press and proper and is that view demands the application.

One argument appears to have been raised that the order of forbidding should be set aside as the notification by which the government made the declaration of forbidding did not state the grounds of the government's opinion as required by section 98-A. The High Court rejected this argument being of opinion that in spite of the provisions of section 97-D of the Code of Criminal Procedure the High Court was "precluded from consideration of any other point than the question whether in fact the documents come within the mischief of the offence charged."

It is quite clear that the government notification did not state the grounds of the opinion formed by the government that these documents contained matters the publication of which was punishable under section 124-A and section 295-A of the Indian Penal Code. The question raised before us is whether the High Court was right in rejecting the argument that the order of forbidding should be set aside on the ground that grounds of the government's opinion were not stated in the government notification as required by section 98-A. The view which prevailed with the learned judges in respect of this question was in accord with what had been held in the same High Court in an earlier case of *Bagmati v. Zopprey* (3) and in the Rajasthan High Court in *Pratap Ahluwalia v. Chief Secretary* (3). The same view has later on been taken

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 (see page 1)

(1) AIR, 1953 207 (2)

(2) AIR, 1954 154 (3)

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by the Indian Pradsak High Court in *N. Krichak v. State of Andhra Pradesh* (1) and by the Madras High Court in a later decision in *State v. Kani* (2) (*State v. State of C. P.* (3)). A comment case appears to have been taken by the Calcutta High Court in *Prosser v. State v. The State of West Bengal* (4). The material portion of section 124-A is in these words:

"Where any newspaper, or book . . . or any document . . . appears in the Government or contains any seditious matter or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of the citizens of India or which is deliberately . . . and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious belief of that class, that is to say, any matter the publication of which is punishable under section 124-A or section 123-A or section 20-A of the Indian Penal Code, the local Government may, by notification in the official Gazette stating the grounds of its opinion, declare . . . every copy of such book . . . to be forfeited to the government."

It is clear therefore that before any government makes a declaration forfeiting a book under the provisions of this section it has first to be of opinion that the book does contain a matter the publication of which is punishable under section 124-A or section 123-A or section 20-A of the Indian Penal Code. Once it forms such an opinion the government has the power to declare the book forfeited. The section requires that this thing be done by a notification in the official Gazette and in that notification the government is required to state the grounds on which it formed the opinion.

(1) 1 I.L.R. 144 (Andhra Pradesh). (2) 15 I.L.R. 1087 (Madras).  
(3) 15 I.L.R. 1087 (Calcutta). (4) 15 I.L.R. 1087 (Calcutta).



The Legislature hereover did not make such an order void by the government insurance from any attack. In section 94-B it has provided the means by which the aggrieved person may obtain relief against the order if in fact the government was acting in its opinion and the book did not contain a matter the publication of which is punishable under section 124-A or section 124-A or section 125-A of the Indian Penal Code. Section 95-B runs thus:

“If  
any person  
aggrieved  
by  
any order  
made  
under  
section 94-B  
may apply to  
the High Court  
for relief.”

“Any person having any complaint in any newspaper, book or other document, in respect of which an order of forfeiture has been made under section 94-A, may, within 90 days from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any defamatory or other matter of such a nature as is referred to in sub-section (1) of section 94-A.”

Section 95-B provides that if after hearing the application the High Court is not satisfied that the issue of the document in question contains any defamatory matter or any other matter referred to in section 94-A, then it is to set aside the publication of which is punishable under section 124-A or section 124-A or section 125-A of the Indian Penal Code the High Court shall set aside the order of forfeiture. The necessary result of the provision also is that if the High Court is satisfied that the book in question contains matter the publication of which is punishable under section 124-A or section 124-A or section 125-A of the Indian Penal Code the High Court will refuse to set aside the order of forfeiture.

It has to be observed that section 95-B is providing for relief to a person aggrieved by an order of forfeiture





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High Court must know what weighed with the government. When the application is heard by the High Court and it has to come to a conclusion whether it is or it is not satisfied that the issue of the newspaper, or the book or other document, does contain a matter mentioned in section 94-A, the one and only way of coming to a conclusion appears to me to be to read the newspaper, or the book, or other document. Arguments of course might be of assistance, if the government has asked its counsel for assistance in its opinion, that would also help, but the ultimate responsibility of deciding whether or not to be satisfied that the issue of newspaper contains matters as mentioned in section 94-A can not be discharged by the High Court by reading the document, in opinion.

It has been suggested that when section 94-B and section 94-D say the words "any newspaper or other matter of such a nature as is referred to in subsection (1) of section 94-A", they mean only those matters on which the Government found the order of banning; so it is urged, unless the Government stand the ground of its opinion, it will be impossible for the Court to decide the question under section 94-B.

I think I do not think it reasonably possible to conceive of a case, where an order under section 94-A will not mention the particular matter referred to in section 94-A(1). The mention of the particular reason out of the several matters referred to in section 94-A which in its opinion is contained in the document does not however exclude the statement of reasons for banning the opinion. Suppose a Government says that in its opinion the document contains subversive matters; it does not mean to be a complete statement on this point, much less the reasons for forming the opinion or not the same. The formation of the opinion

has one or more of the matters referred to in the opinion the certificate is a document; and the statement that such an opinion has been formed and given derives from the statement of the reasons for forming the opinion. It appears to me clear that where, as in the present case the Government order contains a statement of the particular matter or matters one of the several matters referred to in section 59-A or, in relation to matters referred to in section 59-A or, in relation to matters or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of the citizens of India or which is, deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class, that is to say, any reason the publication of which is punishable under section 124-A or section 125-A or section 295-A of the Indian Penal Code' which is its opinion, the document contains, so far as the certificate arises from the fact that the Court has not yet before it Government grounds for forming such opinion.

But, asks the appellant: why was it necessary also for the legislature to require in section 59-A that the Government should state the grounds of its opinion when making the order of forfeiture? The real reason, it is argued, was to enable the High Court to set aside the order of forfeiture if it was not satisfied of the propriety of those grounds, and especially also when no grounds were stated. If that were correct, it was reasonable to expect the legislature to make the necessary provision in section 59-B that an order could be challenged on the ground that the grounds of the opinion were not stated, and consequential provision in section 59-D: but we see no justification for reading into those sections—section 59-A and section 59-D—words which are not there. It is strange to understand why section 59-A contains such a requirement for statement of grounds.

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of the opinion. There can be no doubt that this is a very serious proposition that Government should control the grounds of its opinion. Such a proposition stands in the way of Government making an effective use of its power. It was therefore a question of legislative policy for the legislature to require that the Courts must avoid such an opinion. To say that there could have been no reason for including such a requirement in section 90-A unless the legislature intended the High Court to interfere if grounds of the opinion were not stated, is, in my opinion, wholly unjustified.

It seems clear to me that the duty laid by section 90-B on the judges of the High Court is not to see whether in a particular case the grounds stated by the government for forming its opinion are correct. It is to see whether the opinion formed was correct. It is possible that during the time and the trial was to examine the documents which in the Government's opinion contain the matter complained of.

The argument that the High Court is not in a position to perform this duty under section 90-B stands over in the absence of a statement by the government of the grounds of its opinion appears to me wholly unsound.

In this very case the learned judges of the High Court of Michigan felt no difficulty in coming to a conclusion on the question before them even though the government had not stated the grounds of its opinion. I fail to see any possibility for arguing differently when there are facts.

I have therefore come to the conclusion that the High Court was right in rejecting the argument that the order of reference should be so made on the ground that the constitution did not give government grounds for forming the opinion.

The appeal should therefore be dismissed.

## In the Cause

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in case of the opinion of the majority. His appeal will be allowed and the order of the High Court, reversed. The appellants will be awarded in the costs of all the books, documents and other things, issued from their order the order upon the appeal. He will also be awarded in the reward of expenses and costs that he had in per under the order of the High Court.

*Appeal allowed*

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## SUPREME COURT

## APPELLATE CIVIL

*Before the Hon'ble Mr. Justice Gopalinganathan, the Hon'ble Mr. Justice Wanchoo, the Hon'ble Mr. Justice Das Gupta and the Hon'ble Mr. Justice Aggar.*

1961  
1961

**RAMA SHEDD UMBAK SHODHI (Appellant)**

**vs.**

**THE ALLAHABAD BANK LTD., ALLAHABAD  
(Respondent)**

[On appeal from the High Court at Allahabad]

**Simple mortgage of village by an intermediary.**—Consequence of mortgage—Property available as security of mortgage debts, whether available (a) immediately or as, immediate and intermediary's gross (b) sale, even in whole and in part (c)—*Inter Preterit Remission Adversum and Limit Remission*—*Id.*, 1951, A. 1001, 1002, 3 and 13—*Transfer of Property Act*, 1908, s. 78.

In creation of a decree for the recovery of money due on a simple mortgage by the sale of the proprietary rights of the intermediary in the village mortgaged in 1911.

Held, (i) that the proprietary rights of the intermediary in the immediate and intermediary's gross vested after the registration of the deed of M. P. and the immediate remission thereof under s. 78 of the Act amounted to vesting of the proprietary possession of such land in charge of a new right not created by the mortgage and as such not available for the satisfaction of the mortgage debts.

(ii) (which was so constituted) that the sale, even in whole and in part, was from their own possession in taking to the intermediary and may be said to be mortgage of the mortgage debts.

Civil Appeal no. 501 of 1955, from the judgment and decree dated the 24th September, 1955, of the Allahabad High Court (Lucknow Bench) at Lucknow in First Execution of Decree Appeal no. 8 of 1953.

The facts appear in the judgment.



C. B. Agrawal, Senior Advocate (Gleaner Press) and C. P. Lal, Advocates, with him) for the applicant.

For the respondent, and N. C. Chatterjee, Senior Advocate (S), N. Mukherjee and B. N. Ghosh, Advocates, with them) for the respondent.

The following judgment of the Court was delivered by—

WYOMAN, J.—This is an appeal on a certificate granted by the Allahabad High Court. The brief facts necessary for present purposes are these. The appellant's father Rana Umanath Bahadursingh was the Talukdar of Khayaspur. On 12th July, 1914, Rana Umanath Bahadursingh executed a simple mortgage in favour of the Allahabad Bank Limited (hereinafter called the respondent). The mortgage was for a sum of Rs.60,000 and the property mortgaged consisted of sixty-seven villages. In May, 1916, the respondent filed a suit for the recovery of the balance of the unpaid mortgage money by the sale of the mortgaged property. In January, 1925, a preliminary decree for the recovery of rupees four lakhs and odd was passed, which was made final in July, 1926, and directed the sale of the mortgaged property, namely, the proprietary rights of Rana Umanath Bahadursingh in the sixty-seven villages. Then followed execution applications with which we are not concerned. In 1934, the U. P. Agrarianists' Relief Act was passed and thereupon an application was made by the judgment-debtor for the amendment of the decree under that Act. On 19th October, 1935, the decree was amended under the provisions of that Act and thereafter the pending execution proceedings were dropped as instalments had been fixed. Eventually, the respondent applied for execution on 25th May, 1940. Objection was taken to this application on the ground that it was barred by time, but this matter was decided against the judgment-debtor and thereafter the execution has been proceeding upon now on this application.

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ACTS, 1951  
AND 1952

On 1st July, 1952, the L. P. Zamindari Abolition and Land Reforms Act, no. 1 of 1951 (hereinafter called the Act), came into force. As a consequence of this enactment, the zamindari rights of the judgment-debtors were abolished and it was no longer possible to sell those rights in the eight-seven villages. Consequently, on 26th September, 1952, the respondent made an application that, as the zamindari rights could not be sold, only such rights of the judgment-debtors as remained in force after the coming into force of the Act might be sold namely, the rights in trees and wells in abadi and bakhari manja in various villages under sale. It was also proved that the judgment-debtors' proprietary rights in grove land and ar and bhadkadi land had been continued under section 18 of the Act and these continued subsisting securities in place of the proprietary rights, mortgaged with the respondent and that should also be sold. Finally, it was prayed that compensation money payable to the judgment-debtors on the acquisition of the proprietary rights by the State might be treated as substituted security.

The application, allowed to three appellants as well as respondents. The execution court held that the bailliage, trees and wells situated in the abadi were liable to be sold in execution of the decree. It further held that the respondent was entitled to compensation amount payable to the State as the appellants in lieu of zamindari rights as substituted security. Finally, it held that the bhadkadi rights acquired by the appellants under section 18 of the Act could also be sold in execution of the decree.

The appellants then took the matter on appeal to the High Court and the two points urged before the High Court were:—(i) that the bhadkadi rights cannot be section 18(a) of the Act could not be sold in execution of the decree and (ii) that the appellants could file

September, 1942, with a fresh application for reversion and as it was filed over 12 years after the date of the preceding decree it was barred by time. The High Court, repelled both these contentions and held that reassessment could proceed against the shareholders upon ground of failure of the application under section 11 of the Income Tax Act. The application dated 20th September 1942, was within time as it was not a fresh application and the shareholder was only seeking to maintain the demand in respect of the property for the rate of which he had already applied within the time allowed by law. The High Court therefore dismissed the appeal. The appellants then obtained a certificate of appeal to the Court of Appeal and that is how the matter has come on before us.

The main point urged on behalf of the appellants is that the decision of the High Court that Mohammed's rights ceased under section 18 of the Act can also be said in substance of the decree, is not correct. Under the mortgage deed, the property mortgaged consisted of the property forming part of the Talukdari of Muzungama divided as the form of the mortgage, namely, the mortgage-villages. Thus the mortgage consisted of the proprietary interests only of the mortgagees in the mortgage-villages, and as it was a simple mortgage, possession of no part of the property, was given to the mortgagee. It is therefore contended by the Appellants on behalf of the appellants that as the proprietary rights in the mortgage-villages vested in the State under the Act, the respondents who was only entitled to get the proprietary rights sold under the mortgage, can say fall back only on compensation payable to the appellants under the Act, and reliance, in paragraph 16 placed on section 18 of the Act is thus misconceived. On the other hand, the contention on behalf of the respondents is that Mohammed's rights ceased under section 18 of the Act and he is liable to be sold as

they represented the proprietary rights which were mortgaged and in any case they can be sold as subordinated security in place of the property mortgaged."

We have therefore to look into the scheme of the Act in order to decide between the rival assertions. It is not in dispute that the Taluka of Kharjapur was an estate within the meaning of the Act. It may be mentioned that the judgment-debtor had certain, as well as inalienable lands and immovable goods in the taluk, seven villages comprised within the Talukdars' estate. Section 4 of the Act provides for vesting of an estate in the State on the making of a notification (here under and the Taluka of Kharjapur has acted in the State by virtue of such a notification made under section 4. Section 6 prescribes the consequences of the vesting, arising under section 4 and we may refer to section 6(a)(i) as that will show in what the interests of the judgment-debtor ceased and became vested in the State :—

"(a)—all rights, title and interests of all the interested persons—

(i) in every estate in such area including land (cultivable or barren), grove land, forests whether within or outside village boundaries, trees (other than trees in village plots), holding or grove, fisheries, tanks, ponds, water-channels, ferries, pathways, chaudi sties, huts, houses or other (other than huts, houses, tanks held upon land to which clauses (a) to (c) of sub-section (3) of section 18 apply), and

shall cease and be vested in the State of Uttar Pradesh free from all encumbrances."

Clause (c) of section 4 is also material and is as near correct —

THE  
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OF  
THE  
AGRICULTURE  
AND  
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INDUSTRY  
ACT  
SECTION 4

"(c) no claim or liability enforceable or incurred before the date of coming to square with intermediaries for any money, which is charged on or is secured by a mortgage of such estate as part thereof shall, except as provided in section 13 of the Transfer of Property Act, 1912, be enforceable against his interest in the estate."

All lands showing whether cultivable or barren or grove lands vested in the State on the notification under section 4 having been made are as otherwise provided in the Act. Therefore, proprietary rights in ar and khudrasti land and grove land would vest in the State as the coming into force of the notification under section 4 unless there was some provision otherwise in the Act. The assumption of the respondents therefore that ar and khudrasti land and grove land continued to be the property of the appellants and would therefore remain liable to be sold in execution proceedings would fail in view of the notification under section 4, unless of course there is a provision otherwise in the Act. The only provisions otherwise in which the respondents rely are sections 2 and 13 of the Act. As far as section 2 is concerned, it is certainly a provision otherwise and it provides as follows:—

"All wells or tanks in ar, and all buildings situated within the limits of an estate, belonging to or held by an intermediary or tenant or other person, whether residing in the village or not, shall continue to belong to or be held by such intermediary, tenant or person, as the case may be, and the use of the wells or the buildings with the area appurtenant thereto shall be decided as he settled with him by the State Government on such terms and conditions as may be provided."

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This previous death means its incorporation in the part  
 which went to the State on the making of a new  
 lease under section 4. The mortgage is in lease  
 of all wells and trees in shore and all buildings and  
 it is significant to note that these things will continue  
 to belong to the intermediate, though the latter  
 provision shows that the use of the wells and buildings  
 with the area appurtenant thereto would not in the  
 Convention and would be deemed to be united with  
 the intermediary as such conditions and area is to  
 be prescribed. The effect therefore of section 4 is that  
 wells, trees in shore and buildings apart from the land  
 under them continue to belong to the intermediate  
 (and the appellant is under no obligation to surrender  
 in the meaning of the Act), but even here the land on  
 which the buildings and the wells stand now is the  
 State and it is deemed united with the intermediate  
 on terms and conditions to be prescribed. So far these  
 law as wells and trees in shore and all buildings are  
 concerned, these continue to belong to the appellant  
 and if they are covered by the mortgage they would be  
 liable to sale. As we have already pointed out, there  
 was no dispute before the High Court with respect  
 to wells and trees in shore and buildings and it was  
 conceded that these were liable to be sold, the  
 only dispute being with respect to *blanchette's* rights  
 created under section 18.

Let us now turn to section 18 and see whether it is  
 also a provision otherwise like section 4. The relevant  
 part of section 18 for our purpose is in these terms:

(1) Subject to the provisions of sections 15, 16,  
 16 and 17, all lands—

(a) in possession of or held or deemed to be  
 held by an intermediary, or an, *blanchette* or  
 an intermediary's grant,

may the state immediately preceding the date of testing shall be deemed to be worked by the State Government with such improvements; better, or tenant granted to grow holder to the free man, by whom shall subject to the provisions of this Act be treated as sole or tenant, permanent or a leaseholder tenant."

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It is well to consider the language of this section with the language of section 4. Section 4 lays down that trees and wells on such land and buildings shall continue to belong to the intermediaries and that those persons who purchase others are excepting these three items from coming in the State for value of the notification under section 4 and its consequences under section 8. But there is no provision in section 18 of the Act as the effect that or and Khudkash land and intermediaries' share shall continue to belong to the intermediaries. Therefore, or and Khudkash land and grave land would not in the State for value of section 4(b) for there is no provision otherwise in section 18 in that behalf. In this connection we may refer for comparison to section 25 of the Rajasthan Land Revenue and Assessment of Jagir Act, no. VI of 1955 (hereinafter called the Rajasthan Act) which provides that "excepting anything contained in the last preceding section (i.e. section 22, which refers to consequences of exemption), all Khudkash lands of a jagirdar, etc. shall continue to belong to or be held by such jagirdar or other person. If the intention of the Act was not to take or and Khudkash land and grave land in the State it would have been an exemption under in that land in the Rajasthan Act. Section 9 itself shows us that neither the Legislature was making an exemption when it did not intend that a particular property should not in the State. If the intention were that or and Khudkash land and grave land should not be in the State, section 18 would have been worded in the same

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was in section 9. Further the way in which section 18 is worded, (namely that *khudkash* and ar land and an intermediary's grove shall be deemed to be united with the intermediary's and he would have *khudkash* rights thereby) shows that these three kinds of property vested in the State under section 18(1)<sup>1</sup> and were then identified with the intermediary as a new owner and not as the same rights, which he had in them before the vesting. The Legislature was therefore creating a new right under section 18 and the old proprietary right in ar and *khudkash* land and an intermediary's grove land had already vested under section 6 in the State. Therefore, it cannot be said that section 18 is an exception to the consequences provided in section 6 and therefore ar and *khudkash* land and grove land could not be the property of the judgment-debtor in the case in the same manner as they were his property at the time of the mortgage and would therefore be available in execution of the decree as the proprietary rights mortgaged. We are of opinion that the proprietary right in ar and *khudkash* land and an grove land have ceased in the State and what is conferred on the intermediary by section 18 is a new right altogether which he never had and which could not therefore have been mortgaged in 1914.

Our attention in this question was drawn to the compensation problem in the Act and it was urged that what was given to the intermediary under section 18 was really his old right because no compensation was to be paid to him with respect to what was left to him under section 18. The first section to be considered in this connection is section 38 which deals with the value of a mahal. In these rules there the amount compensated is the rates applicable to the ar proprietary tenure of similar land for land in the personal cultivation of a holder as intermediary's grove, *khudkash*



as to be all the intermediaries in the matter was to be included subject to certain exceptions which are enumerated for our purposes. The way that this in the gross assets the sum of those lands in which the khasr, dakh rights, were created under section 18 were taken into consideration shows that those lands also rested in the State. If they were not so there was no necessity for including those assets in the gross assets for the purpose of compensation. Here again we are relying on a similar provision in the Requisition Act for purposes of compensation. The second Schedule to that Act provides how gross income is to be calculated and in calculating the gross income the income from khasrland land has not been taken into account because it was absorbed from the consequences of resumption under section 23 of that Act. It is true that under section 44 of the Act when calculating net assets, the income from ar and khasrland land and grave land has been excluded on the ground that khasrland rights have been conferred therein under section 18 of the Act. That is however for the purposes of calculating what should be paid to the intermediaries as compensation and in that connection it was necessary to take into account the fact that the Legislature was creating a new right in the mortgagor with respect to certain lands and therefore it was not necessary to give money as compensation. That would not however make any difference in our view as to the legal effect of the modification under section 1 and under the modification ar and khasrland land and grave land would not be the State and would not be an exception to the consequences of vesting in section 8 and therefore the proprietary rights in ar and khasrland land and grave land which were mortgaged would be extinguished and the khasrland right which is created by section 18 would be a new right altogether and would not therefore be considered to be included under the mortgage in this case.

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THE  
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CHIEF JUSTICE  
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Art. 13 is not necessary for us therefore to consider section 8(2) of the U. P. Zamindari Abolition and Reforms Act, for we are clear on the provisions of section 8(2) and the other provisions of the Act that bhudhar rights created in favour of the appellants cannot be sold in execution of the decree held against them by the respondents under the mortgage of 1914.

This brings us to the question of limitation. Mr. Aggarwal contended that if the appellants succeed on the first point it would not be necessary for us to consider the question of limitation. Therefore, as the appellants succeed on the first point we need not consider whether the application for execution by sale of bhudhar rights created under section 18 is barred by limitation.

We therefore allow the appeal and direct that the execution of the decree by the respondents will not be barred against the bhudhar rights created in favour of the appellants under section 18 of the Act. The appellants will get the costs of this Court and of the High Court. Costs of the execution court will be at the discretion of that Court.

*Appeal allowed.*

## SUPREME COURT

## APPELLATE CIVIL.

*Before the Hon'ble The Chief Justice Mr. Bhanu-  
sena & Prasad Jaisin, the Hon'ble Mr. Justice Saha  
Raj, the Hon'ble Mr. Justice Dey and the Hon'ble  
Mr. Justice Mukherjee*

1961  
AIR 4

HARI SHANKER LAL (Appellant)

v

SHAMBHU NATH AND OTHERS (Respondents)

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA]

**Attention**—Reference of dispute for decision by—Time within which award must be made—Competence of arbitrators—Arbitration Act, 1940 ss. 8 and 10, *Arbit. Act*, s. 10.

Rule 1 of the First Schedule to the Arbitration Act, by virtue of s. 8 and in the absence of a different provision expressed in the arbitrators' agreement, limits the time within which the award must be made by the arbitrators.

*Per majority*: The award agreement was: "The arbitrators shall make their award within four months." After having been called upon to act by notice in writing by any party to the arbitrators' agreement, an arbitrator is a person whose notice to act has been given in the arbitrators' award. A notice may be given to an arbitrator before they signed on the reference or (a) even after two months from the date of the notice, issued on the reference. The period of four months would, in the former, be computed from the date of signing on the reference and in the latter from the date of notice to act. A notice is not need, already, he gives only when an arbitrator is not acting i.e. he has refused or neglected to do the thing he does. The court has to give due the power to extend the time even though the award has been finally made beyond the prescribed time.

(*Per Court*, 3)—The period of four months is, in question, is to run from the date of the arbitrators' signing on the reference or from the date of the notice to act. It does not matter if a notice to the arbitrators is not after their own time on the reference and the period of four months must be computed from or extended to such notice.

*Concise, dissenting.*

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The first appeal is the judgment

1. *E. Roper and George R. Roper* for the appellants.

2. *R. Roper*, Attorney for respondents Nos. 1 and 2.

The following judgments of the Court were delivered—

By Mr. Justice J. —This appeal by certificate raises a question of construction of rule 3 of the First Schedule to the Arbitration Act 1940 (14 of 1940) (hereinafter referred to as the Act).

The facts material to the question raised, as far as facts went. The appellants and respondents 1 and 2 are brothers. On 15th August, 1940, the appellants and respondents 1 and 2 and their mother by a registered deed of agreement referred their dispute regarding the purchase of two houses on the site at Rovers to two arbitrators, respondents 3 and 4. Within 10 days of the reference, the said arbitrators gave notice to the parties and began to take evidence, as then required on the reference. On 21st July, 1949, Roper, the mother of the appellants and respondents 1 and 2 died, and the arbitrators did not proceed with the inquiry. On 31st August, 1950, i.e. more than one year after the death of Roper, the appellants gave a notice to the arbitrators requesting them to proceed with the reference and give the award at an early date. On 1st October, 1950, i.e. within 4 months from the date of the notice, the arbitrators made an award and it was duly registered. On 22nd January, 1951, the appellants filed an application under sections 14(2) and

(i) of the Act in the Court of Civil Judge, Baroda, proving that the writ would be filed and he made a rule of the court. The writ application was registered and sent the appellants who placed in the position of plaintiff and the respondents in that of defendants. The respondents raised various objections to the writ application (one of the objections, with which only we are now concerned) was that the writ was not given within the time fixed by law. The learned Civil Judge rejected the objections and made a decree in terms of the writ. On appeal the High Court came to the conclusion that the writ was made after the expiry of the period of limitation and on this finding set aside the decree of the learned Civil Judge and dismissed the suit with costs. Hence this appeal.

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Learned counsel for the appellants contended that rule 4 of the First Schedule to the Act provides for alternative periods within which arbitrators have to make their award, that under the second alternative an award could be made within 4 months from the date of notice served by a party calling upon the arbitrators to act, and that, so as the present case the award is not was given by the appellants to the arbitrators on 31st August, 1911, the award made by them on 3rd October, 1911, is, within the time prescribed.

The answer to the question raised turns upon the true meaning of the provisions of rule 4 of the First Schedule to the Act. It will be convenient in the first to read the relevant provisions of the Act.

Section 3 of the Act reads:

"An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference."

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dates and different starting points for computing the period of four months. The word "not" is certainly more comprehensive than the words "never on the reference." The distinction between the said two sets of words has been brought out with clarity in *Strong v. Oak* v. *Shropshire Coalfield Pick and Shovel Works* (1). There on 11th January, 1935, one of the parties served on the arbitrators a notice in writing addressed to both the arbitrators requiring them to appoint an umpire; on 16th February, 1935, the arbitrators appeared as umpire; the arbitrators did not make any award, but on 20th April, 1935, the umpire made his award; it was contended that by the notice requiring the arbitrators to appoint an umpire, they had not been "called on to act" within the meaning of Schedule 1 (c), to the Arbitration Act, 1926 and consequently the three months within which the arbitrators were required by that clause to make their award had not expired and the jurisdiction of the umpire had not arisen and his award was invalid. In due course it became necessary to decide what the words "called on to act" mean and whether they were synonymous with the words "called on to meet on the reference" (London M.R. referring to that question appeared in p. 40).

"The three months are to run from 'they meet on the reference', and then, in the alternative, when 'having been called on to act'."

If they are "called on to act" as arbitrators, it must mean that they are called on to do an act as arbitrators. It appears to me that these arbitrators were "called on to act" for the purpose to appoint an umpire; and there was very good reason for making the period of three months run from that time. If the arbitrators do not "meet on the reference" and they are "called on to act", it is an arbitration

note  
 "not"  
 "never on a  
 reference"  
 "not"  
 "called on to  
 act"



start from the date of starting upon the reference, though beyond the prescribed time from the notice taking the reference to act, they held that the word *was*, while true on the basis of the second alternative is untrue of the two cases the question that now falls to be considered had directly arisen namely, whether if the notice to act was given subsequent to the arbitrators entering on the reference, the period should be computed from the latter date or from the latter date. That question arises in this case.

$$\begin{array}{r} \text{The} \\ \text{Time} \\ \text{Prescribed To} \\ \text{Commence} \\ \text{The} \\ \text{Arbitration} \\ \text{From} \\ \text{The} \\ \text{Date} \\ \text{Of} \\ \text{The} \\ \text{Notice} \\ \text{To} \\ \text{Act} \end{array}$$

The first alternative leads us to the conclusion that though entering on the reference is an act of the arbitrators, that is not exhaustive of the content of the word "act" in the second alternative.

But this while construction, without limitation, would defeat the purpose of rule 5. The object of the rule is to give the arbitrators time to the arbiters of expediency disposal of arbitrations proceedings. If under the second alternative notice to act can be given at any time it would enable one of the parties to enlarge the period of time prescribed indefinitely; not only the time limit prescribed would become meaningless, but one of the parties could also, without the consent of the other, renege a deed or rule reference. This could not have been the intention of the Legislature and therefore, a reasonable construction should be placed upon the provision. Such a limitation on the right of a party to reopen an abandoned reference is implied in the words "to act". A party can act, the arbitrator to act if he is legally bound to act under the reference. If after the expiry of four months from the date of starting on the reference an arbitrator or an arbitrator act, a notice given thereafter means act from act. Realizing this difficulty, learned counsel for the respondents suggests that an arbitrator can act even after four months, though the award cannot be filed with



give notice cannot give a fixed period unless he has the arbitrators referred or employed to act before such notice is given. The legal position may be formulated thus: (a) A notice to act may be given before or after the arbitrators entered upon the reference. (b) If notice is not given before they entered upon the reference, the four months would be computed from the date they entered upon the reference. (c) If a party gives notice to act within 4 months after the arbitrators entered upon the reference, the arbitrators can make an award within 4 months from the date of such notice. And (d) in that event, after the expiry of the said 4 months the arbitrators become *functus officio* unless the period is extended by court under section 26 of the Act; such period may also be extended by the court though the award has been factually made.

In the present case, the notice was given long after the expiry of four months from the date when the arbitrators entered on the reference and, therefore, they could no longer act pursuant to the notice calling upon them to act. The proper course should have been to apply to the court for extension of time under section 26 of the Act. We, therefore, agree with the conclusion arrived at by the High Court, though on different grounds.

In the result, the appeal fails and is dismissed with costs.

RICHARD DALLAL J. and agree with the order proposed, but for different reasons, which I have stated.

The period of four months under rule 3 of the First Schedule to the Arbitration Act is so run from the date of the arbitrators entering on the reference or from the date on which they have been called upon to act by notice or warning from any party to the arbitration agreement. If the arbitrators have entered upon the reference, the period of four months begins to run from the date they entered on the reference.

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THE notice subsequently given to them calling upon them to sit will not make the period of four months start afresh from the date of the service of the notice. Such a notice would be ineffective for the purposes of determining the period of four months within which the arbitrators had to make the award. In fact, there would be no valid reason for giving such a notice afterwards, in the arbitrators coming to the reference. Parties cannot privity them for conducting their enquiry or taking steps in connexion with the enquiry. Even if they do so now the arbitrators were to charge such a notice is not contemplated by rule 4 of the First Schedule.

It was not possible now when an arbitrator, by his refusal, indicates that he refuses to act, and it becomes necessary for a party to give notice to the other arbitrator to appoint another person arbitrator in his place. The appointment of arbitrators would be complete when the fresh arbitrator has been appointed. The proceedings then commenced would have come to an end as instructions. The period of four months, therefore, would start in accordance with the provisions of rule 4 of the First Schedule and not from the date on which one party had called upon the remaining arbitrators to appoint an arbitrator in the place of one who had refused to act. Sections 2 and 4 of the Arbitration Act provide for the appointment of an arbitrator by the Court in place of such defaulting arbitrator.

The view that the first period of limitation will begin to run from the date of the notice if it be served within the period of four months which had begun to run from the date on which the arbitrators entered on the reference, would mean that any of the parties will be able to extend the period by just giving a notice, to the arbitrators within the original period of four months. Such an abuse of a unilateral notice could not have been intended by the Legislature. If one can extend

the time—the original period of four months—by giving a notice within that period, there is no reason why another four period of four months should not apply to the giving of a second notice to the arbitrators to act before the expiry of the period extended by the first notice. If this be possible, the period for making the award can be extended without any limit by use of the parties. This is what must have been in the mind of Lordcy. M. R., in *Barling Gould's Case* (1) when he said:

"The arbitrators have three months within which to make their award, and the umpire has another month after the expiration of those three months. Every one agrees, although the enactment does not expressly say so, that the time from which the three months are to be reckoned is the first of the two periods mentioned, and not the last. If it were the last, the proceedings might be very unnecessarily postponed."

The enactment under consideration above, is to be found quoted in the bottom of page 86 and, but for the period of three months instead of four months, is in identical terms with those of rule 2 of the First Schedule.

In the present case, the arbitrators did enter on the reference by the end of August 1888 and therefore the award made on 3rd October, 1890, was made beyond the period of four months of the arbitrators' entering on the reference, and was therefore made when the arbitrators had no jurisdiction to make it.

In this view, it is not necessary to consider whether the notice to act, served after the period of four months had expired, is a good notice or not, or whether the arbitrators are competent to act in expiration of giving the time extended by the Court or not. I am, however, inclined to the view that on view of the

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provisions of section 13, it is not possible to say that the arbitrators are not competent to act after the expiry of the period of four months from the date of their entering on the reference. The provisions of this section contemplate the arbitrators having made the award beyond the period of limitation without having previously obtained the order of the Court extending the time of making the award. This implies that the arbitrators would have carried on their proceedings and would have made the award subsequent to the expiry of the period during which they should have made the award. The competency of the arbitrators to act in pursuance of the reference arises out of the reference made by the parties and is not dependent on the period during which they ought to make the award. So long as the power vested in them to decide the dispute between the parties is not withdrawn, they continue to be competent to act on the reference as arbitrators after the period for making the award has expired in the Court.

I also do not consider it necessary to decide in this case as to when arbitrators can be said to enter on the reference or what is meant by 'their being called upon to act' by, namely, under rule 3 of the First Schedule I simply note that I agree with the view expressed in *Partridge v. Commonwealth* (1) that arbitrators enter upon a reference as soon as they have accepted their appointment and have communicated with each other about the reference. This is a stage earlier than their starting the proceedings in the presence of the parties or under some preliminary order compelling them to conduct the hearing *ex parte*. 'Calling upon the arbitrators to act' does include asking the arbitrators to enter on the reference, but may also include asking them to do anything in connection with the reference except calling them to do the routine acts connected with the enquiry.

*Appeal dismissed.*



## SUPREME COURT

## APPELLATE CIVIL

Before His Hon'ble the Chief Justice Mr. Kameswarar  
Prasad Sahai, the Hon'ble Mr. Justice Sukhdeo Rao,  
the Hon'ble Mr. Justice Deyal and the  
Hon'ble Mr. Justice Madhokar  
HIRA LAL PATNI (Appellant)

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## SHI KALI NATH (Respondent)

**Judicial Sale of Civil Courts—Effect of local publication—**  
Effect of objection to an application to exercise of jurisdiction—  
Effect of objection to the validity of a certificate of appeal  
issued—Code of Civil Procedure, 1908, ss. 21, 40 and 54

It is well settled that the sale of local publication in a civil  
court does not stand on the same footing as the sale of a local  
publication in which the court is not in all respects an  
adversely affected. The former though not the latter is subject to an  
objection or return.

Accordingly, where the court does not make any sale of  
a local publication, but simply for sale of a local publication  
which is not in the sale of the court, the proper course of action  
would be to file an objection to the publication and the defend-  
ing does not object to the sale being referred to the court in the  
affidavit, but is exempted from subsequently challenging the  
publication of the court to exercise the sale as to which is the  
objection to the court itself.

*Ex parte v. B. S. 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certain proceedings, when by the degree involved—appellate, in the following circumstances. The appellant wished to acquire shares in certain mills, popularly known as 'John Mills', in Agra. He engaged the services of the respondent to negotiate the deal on certain terms. The bargain was concluded, and the appellant, together with another person, purchased the entire interest of one Major A. V. John in an indenture of sale dated 19th July, 1949. The respondent retained a note, being page No. 312 of 1947, on the original file of the High Court of Judicature at Bombay, for recovery of his commission, amounting to one fifth of expenses, in respect of the transaction aforesaid.

The suit was originally referred to the solicitors of one Mr. W. E. Peters, administrator of the estate of the deceased Major A. U. Johns, deceased. One of the defenses taken by the appellants, as defendants in the action, was that the suit filed in the Bombay High Court, is barred, after obtaining leave of that Court under clause (3) of the Letters Patent, was outside the territorial jurisdiction of the Bombay High Court as the original suit commenced at the same cause of action, if any, had arisen in Agre. The defendant gave an averment as defense to the respondents to the amount of decreasing his claim from only twenty five thousand rupees to commission, with interest at 8 per cent per annum *pendente lite*. Proceedings were taken in the High Court of Bombay for setting aside the award on certain grounds, not necessary to be stated here. The Bombay High Court found that there was no defect in the award and that there was no legal impediment on the part of the arbitrator. The High Court further held that the petition was frivolous, and dismissed it with costs. The appellants preferred an appeal which was dismissed by a Division Bench of the High Court of Bombay on 21st January, 1931. The award was, thus, unimpaired as a decree of the High Court. That decree was transferred to the Court of the

**DECREE JUDGE AGRA FOR DECREE.** On 24th February, 1902 the execution proceedings were instituted by the decree holder in the Court of the Civil Judge, Agrā, to realize the sum of one lakh one thousand rupees, against assets on the basis of the decree passed as aforesaid by the Bombay High Court.

The appellant, as judgment-debtor, put in an objection under sections 97 and 101 of the Code of Civil Procedure, objecting to the execution of the decree on a number of grounds, of which it is only necessary to notice the one challenging the jurisdiction of the High Court to entertain the suit and to make the award a decree of Court. It was contended that the Bombay High Court had no jurisdiction to entertain the suit as no part of the cause of action was shown within the territorial jurisdiction of that Court, and that, therefore, all the proceedings following thereupon were wholly without jurisdiction. The learned Executive Judge, by his judgment and order dated 2nd April, 1904 dismissed the objection put in with costs. The appellant then preferred an appeal to the High Court of Judicature at Allahabad against the aforesaid judgment and order of the Executive Court. The appeal, being Execution First Appeal No. 137 of 1904, was ultimately dismissed by a Division Bench of the Allahabad High Court, by its judgment dated 17th January, 1905. The judgment-debtor-appellant moved the High Court and obtained the necessary certificate that the case was a fit one for appeal to this Court, and that it bore the nature of a *certiorari*.

The order passed on which the decision of the High Court is challenged is that the suit commenced on the original side of the Bombay High Court was wholly incompetent, for want of territorial jurisdiction and that, therefore, the award that followed on the reference between the parties and the decree of Court, under execution, were all null and void. Strong reliance was placed upon the decision of the Privy Council in the case of *Lodgson & Bull* (1). In our opinion, there is no substance in this

THE  
HON'BLE  
JUDGE  
OF THE  
HIGH COURT  
AT  
BOMBAY.



dictate to one which does not go to the competence of the court and can, therefore, be waived. In the instant case, when the plaintiff obtained the leave of the Bombay High Court on the original side, under clause 12 of the Letters Patent, the correctness of the procedure or of the order granting the leave could be questioned by the defendant or the objection could be waived by him. When he agreed to refer the matter to arbitration through court, he would be deemed to have waived his objection to the territorial jurisdiction of the court, raised by him in his written statement. It is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the competence of a court to try a case. Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand, an objection as to the local jurisdiction of a court can be waived and this principle has been given a statutory recognition by enactment (By section 21 of the Code of Civil Procedure). Having entered to take the controversy between the parties settled by reference to arbitration through court, the defendant deprived himself of the right to question the authority of the court to refer the matter to arbitration or of the arbitrator to render the award. It is clear, therefore, that the defendant is estopped from challenging the jurisdiction of the Bombay High Court to maintain the suit and to make the reference to the arbitrator. He is equally estopped from challenging the authority of the arbitrator to render the award. In our opinion, this conclusion is sufficient to dispose of the appeal. It is not, therefore, necessary to determine the other points in controversy, including the question whether The Deccan and Orders Validating Act, 1936 (Act V of 1936) had the effect of validating what otherwise may have been invalid.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

1936  
 Appeal No. 1 of  
 1936  
 In  
 the High  
 Court  
 of Bombay  
 (S. B. 1)

## CIVIL REVISION

*Before Mr. Justice Nathan L.J.*

**DEBA NAYD NAUTHANI (Applicant)**

1961  
140-15

**JAYANAND AND OTHERS (Respondents/Plaintiffs)**

**Case of Civil Revision, 1961 v. Miscellaneous for several cases of decrees/orders affirmed in appeal—Merges of decrees—Effect of decree has been to cancel the decree**

*Held* the proper course for making the application under s. 112 in cases where an appeal has been decided on merits and the decree of the lower court has merged into the appellate decree which is the appellate decree and not the trial decree.

Once a decree is affirmed by the High Court, it merges into the decree of the High Court and it is no longer open to the lower court to vary that decree by way of review.

*Chandrasekhar v. Sethi Prasad* (1) and *Yashwanth Maheshwar Subramaniam Khan v. Sri Khan* (2), *Sriy Narayan v. Rajesh Maheshwar Subramaniam* (3) and *Nirmala Devi v. Srinivas Srinivasachari* (4) *See also* *K. P. v. Mohammed Yusuf* (5), *Commissioner of Police v. Jagan Lal Bhagat* (6) (3) and *Narayan Chandra Municipal Board, Karpur* (7) *affid* (8).

Civil Revision no. 587 of 1961, against the order of R. B. Khondkar, Munsiff, Faeroo Garhwal dated 4th November, 1959.

The facts appear in the judgment.

*V. B. Puri*, for the applicant.

*Sriy Narayan Prasad* for the respondents.

The judgment of the Court was delivered by—

**LAW.]**—This civil revision, filed by the Judgment *debetor*, arose out of the amendment of the decree on an application made under section 112 of the Civil Procedure Code by the Decree-holder.

The decree-holder brought a suit for possession over certain land by removal of encroachments and also for

19-6-61, 1961, 44, 101

19-6-61, 1, 3, 12, 101

19-6-61, 1961, 12, 101

19-6-61, 12, 12, 12, 101

19-6-61, 1961, 12, 101

19-6-61, 1961, 12, 101

(1) 12, 12, 12, 101

ignorance. The suit was decreed "for possession over 1/18 acre of land situated in yellow cedar in Anna's map dated 15th March, 1918". There was no order of demolition of any wall or any particular construction, although it was also observed as a later part of the operative portion that "it is unfortunate that a portion of the defendant's house has to be demolished etc. for this the defendants have to thank themselves". The matter came up on appeal, and the decree of the trial court was affirmed. The decree, which was proposed, did not mention any thing about the demolition of any constructions and so the defendant's wife an applicant under section 102, Civil Procedure Code, for amendment of the decree stating that the mistake was accidental or clerical. The learned Master of Pleadings relying upon the case of *Chanda Mani v. Datta Prasad* (1) accepted the decree holder's contention and ordered the amendment of the decree. It is against this order that the present revision has been filed.

The main contention of Mr. N. D. Patel, learned counsel for the applicant, is that the decree passed by the trial court having been confirmed in appeal the trial court had no jurisdiction to amend the decree because of its merger.

I have heard learned counsel for the opposite parties at some length. Except for the solitary case of *Chitra Mani v. Datta Prasad* (2) this Court has taken a consistent view that after the trial court's decree is affirmed in appeal the proper court to amend the decree under section 151, Civil Procedure Code is the appellate Court. Reference in this behalf was made to the authority of *Mohammed Salimuddin Khan v. Yaq Khan* (3) where it was laid down by the Full Bench that where a decree has been affirmed on appeal "the only decree which can be amended under section 102 (now 103) of the Code is the decree to be executed and the decree to be executed is

1918  
Case Name  
Particulars  
Page No.  
Date

(1) A.I.R. 1954, 461, 469.

(2) (1955) 13 B. &amp; L.R. 449.

appeal  
from a decree  
of a court  
of first instance  
to a court of  
appeal.

that of the appellate court and not the suspended decree of the first court, though the latter may, if necessary, be referred to for the purpose of construing the appellate decree. The only court which has jurisdiction to amend the appellate decree is the court of appeal." It was followed in *Mehta Lal v. Madhai Singh* (1) by a single Judge of this Court who held that "no decree passed by the appellate court is a first court which could amend an error that may be in a decree passed by the original court." That was also a case under section 104, Civil Procedure Code. In *Brij Narain v. Tejpal Sidram Behlwar* (2) which is a Privy Council case, it has been held that the court of first instance has no jurisdiction to alter or amend a decree after it has been affirmed in appeal. There is also an authority of Bombay High Court in the case of *Munson Sah v. Sidram Fighwarwar* (3) where the same view was laid down. That authority makes a distinction between appeals dismissed summarily under Order 41, rule 11 and those decided on merits and after stating the distances, it has been laid down that "where the decree of the trial court is confirmed in appeal the decree of the trial court merges in the decree of the appellate court and if amendment is sought it should be sought in the appellate Court and not in the trial court."

None of the foregoing authorities appear to have been brought to the notice of the learned single Judge deciding the 1899 case of *Alahabad* who thought that it would be "highly anomalous if it were necessary for such matters to form the subject of applications in the High Court. If the order of the High Court is desired, an application may be made in review." With all respects to my learned brother I have to differ from his view because I am of opinion that once a decree has been affirmed in appeal the trial court's decree merges in the

(1) A.I.R. 1901, 407, 398. (2) [1904] 1 B.L.J. 401.  
(3) 4 B.L.J. 104, 105, 106.



appellate decree and if any amendment is sought by means of section 112 it must be done by moving an application in the appellate court and not in the trial court.

Learned counsel for the opposite parties has contended that the principle of merger should not apply to the decree which has been confirmed in appeal though it may apply in other cases where there has been any variation as to reversal of the trial court decree. This view does not find support from the authorities, and cannot be accepted because the very principle of merger is based on the fusion of the trial court decree into a higher decree. The learned counsel for the other side has further contended that even if there is merger it is for certain purposes and the operation of the decree passed by the trial court cannot be deemed to have been interrupted where the decree on appeal is merely one of dismissal. This may be true in certain cases and in fact this observation has been made by their Lordships of the Supreme Court in the case of *State of U. P. v. Mahmood Noor* (1) where they have observed:

"Whatever be the theory under other systems of law, under the Indian Law and procedure an original decree is not suspended by the presentation of an appeal nor is its operation interrupted while the decree on appeal is merely one of dismissal . . .

The filing of the appeal or revision may put the decree or order in dispute's legal validity in question or modified it remains effective."

The aforesaid observations of their Lordships have made in quite a different context. In the present case the power involved is of the jurisdiction, that is which court will have jurisdiction or power to deal with an application under section 112, Civil Procedure Code, after an appeal against such a decree has been decided on merits. This has nothing to do with the continued operation of the trial court decree nor is it our brother's case that

197  
 The State  
 of U. P.  
 v.  
 Mahmood  
 Noor  
 (1)

194  
*Appellate  
 Jurisdiction  
 of  
 Supreme  
 Court, 7*

the decree of the trial court remained suspended by the pendency of an appeal. The simple point for determination in the case is as to whether an application under section 112 should be filed in the appellate court which affirmed or varied the decree in the trial court which tried the suit and passed the first decree. It is only in this context that a reference has been made in the principle of merger.

The principle of merger also appears to have been upheld by three Judges of the Supreme Court in two other cases: *Commissioner of Income-tax v. M/s. Amrit Lal Shrohal Go.* (3) and *Shivam Goel v. The Municipal Board, Kanpur* (4). These two cases will show that the Supreme Court is also of opinion that a decree of the trial court gets merged into that of the appellate court whether the appellate court affirms or reverses or modifies the decree.

On the principle of merger it may also be worth while to refer two cases of order in which the principle of merger of the trial court decree into the appellate court decree has been laid down. In this connection a reference may be made to the authority of *Shri Bahai v. Mai Rajeshwar Kumar* (5) wherein the Division Bench held thus:

"When once a decree or order is affirmed on appeal by a superior court, it is not open to the lower court which passed the decree to entertain an application for review. The law undoubtedly is whether the decree passed by the superior court is such that the decree passed by the lower court has been merged in it. . . . But, where an appeal is dismissed on the ground that it was incompetent or there was no provision in law for the appeal, the case falls within the purview of Order 47, Rule 1(3)(3) and the above principle has no application."

(3) A.I.R. 1948 445, 447.

(4) A.I.R. 1948 445, 447.

(5) A.I.R. 1948 445, 447.

The  
High Court  
"reversed"  
the  
decision  
of the  
trial court.

The same term appears to have been meaning in a subsequent Full Bench case reported in the same volume at page 334. There is also an earlier authority of Sirs Jash Singh v. Mahabir Singh (1). That was also a case of review, and it was held that "once a decree is affirmed by the High Court it merges into the decree of High Court and it is no longer open to the lower Court to vary that decree by way of review." A relevant may also be made to the case of *Haji Mohammad Yusuf v. The Custodian General, Enemy Properties, New Delhi* (2) in which the earlier view of this court was affirmed by holding that where an appeal has been heard and decided it is the decree of the appellate court which is operative and not of the trial court and consequently for an application under section 145, Civil Procedure Code, the proper court to entertain an application under section 145, Civil Procedure Court, after an appeal from the original decree has been decided on merits, will be the appellate court and not the trial court.

A plain reading of section 145, Civil Procedure Code, will show that "the court" may at any time correct either on its own motion or on the application of any of the parties, clerical or arithmetical mistakes in judgments, decrees, or orders or errors arising therein from any accidental slip or omission. The expression 'in any case' is no doubt wide and gives the court a power to make the correction at any time, but this only does away with the question of limitation. The expression 'the court' should mean the court the decree of which is sought to be amended or the decree of which (court) is executable. In cases in which the decree of the trial court has been affirmed or varied on appeal the only executable decree is that of the appellate court because in such a case the decree of the lower court shall be deemed to have been superseded. In this view of the matter the Court which will have the jurisdiction to amend such

(1) 5 IN. 102, 40, 190.

(2) 1951 S.A. 1 201.

189.  
The first  
sentence  
of  
section  
181.

a decree should be the appellate court, and not the trial court. I am of opinion that in view of the meanings of the section, as well as the law laid down in various authorities referred to earlier, the proper court for making an application under section 181, in cases where an appeal has been decided on merits and the decree of the lower court has merged into the appellate decree, would be the appellate court and not the trial court. The learned Master, therefore, who passed an order of amendment of the decree, had no jurisdiction to pass such an order and consequently the order passed by him must be set aside.

The revision is allowed with costs and the order passed by the court below is set aside.

Reversal of the case shall be sent back to the court below as early as possible.

Revisions allowed.

## SUPREME COURT

## APPELLATE CIVIL

—

*Before the Hon'ble Mr. Justice Cagendragadhar, the  
Hon'ble Mr. Justice Wadhwa and the Hon'ble Mr.  
Justice Das Gupta*

—

THE J. K. COTTON SPINNING AND WEAVING  
MILLS CO. LIMITED (Appellant)

vs.

THE STATE OF UTTAR PRADESH AND OTHERS <sup>(Respondents)</sup>  
(Respondents)

(ON APPEAL FROM THE HIGH COURT AT ALLAHABAD)

*Interpretation of Statutes—Facts just of statute should have  
appeal—General provision of Statute, whether should read  
in special provision—Government Order, G.O. No. 11 of 1947  
under U. P. Industrial Disputes Act, 1947, construction of*

By clause 1(2) of the Government Order issued to the  
Governor of the United Provinces in exercise of the powers  
conferred on him by the U. P. Industrial Disputes Act, 1947,  
the employees of respondent consisting of employees  
and by application in writing from the State to require  
the said industrial dispute.

Clause 11 of the Government Order however provides that  
no employee shall during the continuance of an on-  
going or appeal dispute or dispute may continue with  
the stated position of the Employer, Conciliation Officer  
concerned.

When an application was made by an Employee, Anon.  
and under clause 1(2) of the order the the demand of the  
order and which will when an employee who pending under  
clause 11 and the Board pending the application for the  
Uttar Pradesh Industrial Disputes Act in the ground that  
the application under clause 1(2) was not permanent.  
The Employees Association filed a petition under Article 226  
which was dismissed and on Special Appeal the order was

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[illegible]

affirmed but a writ of habeas corpus under Articles 135(1) and 135(2)(d) was refused to him on appeal to the Supreme Court.

1. **Introduction**  
 2. **Background**  
 3. **Methodology**  
 4. **Results**  
 5. **Conclusion**  
 6. **References**

Again, that in the interpretation of Statutes the Court should presume that the Legislature intended every part thereof to be operative and the Legislature intended in that very part all the values should have effect. The rule of interpretation of Statutes further is that the general provision should yield to specific provisions and the general provision applies only in such cases which are not covered by the special provision. On the application of the above rule of interpretation of Statutes above, "it has no application to a case where the several provisions of Chapter 33 are conflicting."

Consequently, when an employer was paying below a prevailing wage claim is applied in respect of any discharge or dismissal of a woman and the employee could not take the advantage of clause 5(a) of the Government Order and that an application could not be filed to set aside the discharge.

Civil Appeal no. 157 of 1959 from the judgments and decrees, dated the 30th January, 1956 of the Allahabad High Court, in Special Appeal no. 205 of 1956.

(connected with Civil Appeal no. 178 of 1934 from the judgment and order, dated the 12th January, 1932 of the Lahore Appellate Court, Tehsildar of India, Allahabad, in Appeal no. Cst. 40 of 1931).

### The North America on the edge

M. C. Eshel, Junior, Counsel for Inds. & C. Miller, Attorney with him, for the appellants.

At the instant after the explosion the Respondent was in the Civil Guard no. 137 of 1909.

C. P. Leif, Attorney for the State of U. P. and Respondents nos. 3 and 4 (in Civil Appeal no. 457 of 1948)

© P. F. as representative of the Estate for Tax purposes on 1 (in Civil Appeal no. 148 of 1993).

The following judgment of the Court was delivered by—

1948  
 THE J. K. COTTON SPINNING AND WEAVING MILLS CO. LTD.  
 vs.  
 THE STATE OF GUJARAT  
 (1948) 1 L.J. 111

**JUDGMENT.**—These two appeals raise the question of the maintainability of an application made by the Employers' Association of Northern India, Kanpur, on behalf of the J. K. Cotton Spinning and Weaving Mills Co. Ltd., a member of the Association in connection with the proposed termination of service of certain members of its watch and ward staff. But before we come to the consideration of this question it is necessary to refer to the long and tortuous path this matter has travelled before coming to us. The application of the Employers' Association presented to be under clause (a) of the Government order, dated the 10th March, 1948, as amended by a later order of 14th May 1948. This order was issued by the Governor of the United Provinces in exercise of the powers conferred on him by clauses (3), (4), (5) and (6) of section 3 and by section 8 of the U. P. Industrial Disputes Act, 1947. The application after stating that a number of strikes at Daudley had taken place in the Mill further stated that it was obvious to the management of the J. K. Cotton Spinning and Weaving Mills Co. Ltd., that this state of affairs could not exist and continue if watch and ward staff were carrying out their duties vigilantly, correctly and honestly. It stated further that the management having lost confidence in the honesty of the watch and ward staff had decided to terminate the services of all the persons of the watch and ward staff and to re-employ them from the employment exchange and that in lieu of notice of termination of service the management would pay to these persons 12 days' wages in accordance with Standing Order no. 15A. The prayer made in the application was that 'the listed be placed'





**Lahore Appellate Tribunal of India.** The applicant submitted affidavits in an earlier division of his case in *Kempas Mill Workers Union v. Employees' Association of Northern India* (3), that the application under clause 101 of the Constitution Order was not maintainable. Accordingly, it allowed the appeal and set aside the order of the Board as well as the Industrial Court.

THE  
HON. J. B.  
CHANDLER  
JUDGE  
OF THE  
LAHORE  
APPELLATE  
TRIBUNAL  
OF INDIA  
IN THE  
MATTER OF  
THE  
KEMPAS  
MILL WORKERS  
UNION  
V.  
EMPLOYEES'  
ASSOCIATION  
OF NORTHERN  
INDIA

[*R. Cotton Spinning and Weaving Mills Co. Ltd.*—Overseas filed an application under Article 226 of the Constitution to the High Court of Judicature at Allahabad praying for a writ in the nature of certiorari calling for the records of the case from the Lahore Appellate Tribunal of India and quashing the order of the Tribunal which has been pronounced above. The Justice Commissioners, Lahore, allowed the application since up to her hearing held that the application under clause 101 was maintainable and the Appellate Tribunal had acted in bad faith otherwise being aware of reasons that case had been under delay in making the application for a writ. In division of the petition on that ground, in the Lahore Bench appeal preferred by the company against the division a preliminary objection was raised on behalf of the union representing the workmen that the Allahabad High Court could not call for the records and quash the order of the Lahore Appellate Tribunal of India in those records were in Calcutta and, consequently beyond the reach of the writ. The learned Judge who heard the appeal upheld the objection and dismissed the appeal. The learned court's decision was reversed under Article 100(3) and Article 115(1)(b) of the Constitution. Therefore the company also obtained special leave from the Court to appeal directly against the order of the Lahore Appellate Tribunal of India.]

(1954) 1 L.J. 95.



in matters of the workmen in such matters as industry duly elected in this behalf by a majority of the workmen in such concerns or industry as the case may be, at a meeting held for the purpose by application in writing made the Board to enquire into any industrial dispute. The application shall also be state the industrial dispute or disputes which are to be the subject of such inquiry.

THE  
 CHAIRMAN OF THE  
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Clause 10 provides for the constitution of industrial courts for specified terms. Clause 11 provides for appeals to the Court against the awards made by the Board. The order draws up to clause 12 deal with the powers and procedure of Board or the Industrial Court, and with the duties of employers to permit certain meetings to be held. Then comes clause 21 which is in these words:

"Save with the written permission of the Regional Conciliation Officer or the Additional Regional Conciliation Officer concerned, every person of the law, whether an employer or pending before a Regional Conciliation Board or the Provincial Conciliation Board, or an appeal is pending before the Industrial Court, an employer his agent or manager, shall during the continuance of an inquiry or appeal, discharge or detain any workmen."

Section 24 provides that every order made or decision issued under the provisions of this Government order shall be final and conclusive. Clause 25 provides for penalties for contravention or non-compliance with any of the provisions of the order.

A consideration of the scheme of this legislation makes it clear that while two modes are provided in clauses 3(4) and 3(5) for the constitution of

and  
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during the continuance of any enquiry before the Regional Conciliation Board or the Additional Conciliation Board or during the pendency of the appeal before the Industrial Court. There is no dispute that on 15th June 1948, when the application under clause 5(a) was made an enquiry was in fact pending before a Conciliation Officer. It appears that on 6th July, 1948, the Governor of the United Provinces made an order directing the Labour Commissioner of the United Provinces as a Conciliation Officer nominated by him in this behalf to attend the adjudication proceedings between the J. R. Cotton Spinning and Weaving Mills Co. and S. M. Shukla, a certified employee of the concern. The Adjudicator was directed to conclude the adjudication and submit his award by 15th August, 1948. The time was extended by subsequent orders—first on 15th November, 1948, and then on 31st March, 1949, again on 30th June, 1949, and thereafter on 15th September, 1949. It is true that at the time these orders extending time for submission of award were made the Governor had no authority to make these orders and these orders were annulled. They were validated by the provisions of section 3 of the U. P. Act XXIII of 1953. In view of this position of the law the learned Attorney-General has not disputed that on 15th June, 1948, when the application under clause 5(a) was made an enquiry was actually pending before a Conciliation Officer. Consequently, before the management could make any order discharging or dismissing any of its workmen it was required by clause 22 to obtain permission for the same from the Regional Conciliation Officer. The question is whether in spite of this provision in clause 22 the employees could make and the Board entertain an application under clause 5(a) on the question of proposed

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The J. R. Cotton Spinning and Weaving Mills Co. v. S. M. Shukla  
The Govt. of U. P.  
The Labour Commissioner, U. P.  
The Conciliation Officer, U. P.  
The Industrial Court, U. P.

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We propose to consider this question first, and for this purpose assume that an industrial dispute comes into existence as soon as the employer decides to dismiss his workmen and proposes to do so, and that accordingly he can make an application in such a dispute to the Board under the provisions of clause 14(c). If such application is decided against the employer, and no permission is given to make the proposed dismissal, no difficulty arises. What, however, is the position if on such an application the Board makes an order granting the employer the request, permission to dismiss his workmen? Under clause 14 the order makes provided for appeal will be final and conclusive and shall not be questioned by any party thereto. So far as the workmen are concerned they will not be able to dispute the correctness of the order except in the mode provided in the Government order, 1904. What, however, is the position of the employer if on permission of the order made on his application under article 14(c) he discharges or dismisses his workmen? By doing so he will have directly contravened the provisions of clause 13, and will become liable to the severe penalty provided in clause 13—a penalty which might even extend to attachment up to three years.

To remove this inconsistency, says the Hon'ble Attorney General, apply the rule of harmonious construction and hold that clause 13 of the order has no application when an order is made on an application under clause 14(c). On the assumption that under clause 14(c) an employer can cause a dispute enough to be created by his own proposed order of dismissal of workmen there is clearly the difference as pointed out above between two provisions viz., clause 14(c) and clause 13; and undoubtedly we have to apply the rule of harmonious construction. In applying the rule, however,

we have to remember that to harmonize is not to destroy. In the interpretation of statutes the courts draw pains to show the legislature wanted every part carried for a purpose and the legislative intention is that every part of the statute should have effect. These presumptions will have to be made in the case of rule making authority also. On the construction suggested by the learned Attorney-General it is obvious that by making making an application under clause (4) on the allegation that a dispute has arisen shows the proposed action is dispute workman the employer can in every case escape the requirements of clause 23 and if the rule maker or other every employer when proposing a discharge prefer to proceed under clause 34j instead of making an application under clause 23, clause 23 will be a dead letter. A construction like this which defeats the intention of the rule making authority in clause 23 must, if possible, be avoided.

It is hardly necessary to mention that this rule in clause 23 was made with a definite purpose. The provision here is very similar to section 33 of the Industrial Disputes Act before its amendment, though there are some differences. It is easy to see, however, that the rule making authority in making this rule was anxious to prevent as far as possible the consideration of fresh disputes between employers and workmen when some dispute was already pending and that purpose will be directly defeated if a fresh dispute is allowed to be raised under clause 34j in the very cases where clause 23 is meant to apply.

There will be complete harmony however if we hold instead that clause 34j will apply in all other cases of proposed discharge or discharge except where an inquiry is pending within the meaning of clause 23. We reach the same result by applying another well known rule

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provide the specific provision prevails over the general provision and the general provision applies only in such cases which are not covered by the special provision, we must hold that clause 2(1) has no application in a case where the special provisions of clause 23 are applicable.

As in the present case on inquiry was not fast pending before a Conciliation Officer, clause 14 applied in respect of any discharge or dismissal of a workman and the employer could not take advantage of clause 10(a) of the Conciliation Order and make an application for reinstatement to be considered by the Board.

In view of this conclusion it is unnecessary for us to consider the other question that was raised, viz., whether an industrial dispute within the meaning of clause (36) means also a dispute as soon as an employee desires or the dismissal of some of its workmen and desires to give effect to such a decision.

On the above considerations we hold that the Labour Appellate Tribunal of India again held that the application under clause 9(a) filed on 15th June, 1959, was not maintainable and rightly set aside the award of the Conciliation Board and the Industrial Court. The appeal against the order of the Labour Appellate Tribunal of India is, therefore, dismissed.

As we have already pointed out above the order made by the Appellate Bench of the High Court in the writ petition was based on its acceptance of the preliminary allegation that the records of the Labour Appellate Tribunal being in Calcutta could not be reached in any way, of the Affiliated High Court. In view of our conclusion that the application under clause 154 was not maintainable, the Appellate was in error, not



## CRIMINAL REVISION

*By Mr. Justice J. Saha and Mr. Justice La.*

R. S. SHARMA

STATE

**Prosecution under Factories Act—Limitation for filing an appeal for, having gone into—Factories Act, 1948, s. 146.**

The period of three months within which the complaint has to be filed under the Factories Act need to be filed by the Inspector is to be calculated from—(1) the date of his observation where the complaint is based directly on his personal knowledge; (2) the date of receipt by him of the information where the complaint is based on information received through others, or being concerned in the former case whether the information is such which he believes to be correct or otherwise.

The question of the date of the Inspector's knowledge of the alleged commission of the offence cannot be left to him or be possible to his evidence alone.

Crusade Revision no. 151 of 1950, from an order of H. S. Krishna, Civil and Session Judge, Meerut, dated the 18th October, 1950, in Crusade Revision no. 163 of 1950.

The law appears in the judgment.

P. C. Chatterjee, for the applicant.

Government Advocate, for the State.

The judgment of the Court was delivered by—

J. Saha, J.—The petitioner R. S. Sharma has been convicted under section 92 of the Factories Act (hereinafter referred to as the Act) and rule 170 of the rules framed thereunder (hereinafter referred to as the rules) and sentenced to pay a fine of Rs. 100. He filed a revision application before the learned Session Judge who refused to make a reference to this Court and refused

the application. Therefore the petitioner filed a revision application in this Court under section 419 of the Code of Criminal Procedure which came up for hearing before a learned Single Judge. On a reference being made to him as a larger Bench the matter has come before us. The only submission that has been made on behalf of the petitioner before us is that the complaint on the basis of which he has been convicted was barred by limitation.

The accident giving rise to this reference and in which one Zile Singh was the victim occurred on the 15th of September, 1905. The matter was reported to the Inspector of Factories (hereinafter referred to as the Inspector) by means of an application, dated the 14th November, 1907, made by Zile Singh. The Inspector received this application on the 12th of February, 1908, and the complaint giving rise to this case was filed by the Inspector on the 3rd of July, 1908.

Section 166 of the Act requires that a complaint should be made within three months of the date on which the alleged commission of the offence came to the knowledge of the Inspector. The question for consideration is whether on the basis of the information with regard to the offence which the Inspector received on the 12th of February, 1908, by means of the application of Zile Singh, knowledge can be imputed to him as to when the provisions of section 166 of the Act. The said section reads as follows.

"166. No Court shall take cognizance of any offence, punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector;

Provided that where the offence consists of the obeying a written order made by an Inspector,

complaint thereof may be made within six months of the date on which the offence is alleged to have been committed."

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It is common ground that the process is not applicable to the facts of the present case and we are concerned only with the mere clause of section 100 of the Act. Section 100 of the Act lays down a rule which affects the jurisdiction of the court. If the complaint is not filed within the period prescribed, the court shall not have jurisdiction to try the same. The key word in the section is "knowledge." It has been contended on behalf of the State that there is a difference between 'knowledge' and 'information' and knowledge can be imputed to a person only at the stage when he believes the information to be true and that stage can only be reached after an enquiry has been made and satisfaction reached by the Inspector that the information is correct. It has been submitted that whether or not an Inspector had knowledge can be proved by him alone. In shorter Oxford English Dictionary among other the following meanings have been given to the word "knowledge":

"Acquaintance with a fact; state of being aware or informed, consciousness (of anything), acquaintance with facts, range of information. Intellectual acquaintance with, or perception of, fact or truth, the fact, state or condition of understanding. Formerly, also, intelligence, intellect. A mental apprehension, a cognition. Theoretical or practical understanding of an art, science, language, etc. The fact or condition of being instructed, information supplied by study, learning. Information, intelligence, instruction."

It would be seen from the above that the word "knowledge" is sometimes used also in the sense of information.

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reason. When a person says that he has knowledge he is describing a state of his mind. That state may be reached either by what one sees or by what he hears and what he believes to be true. If an informant is received which the Inspector does not believe to be true or has no reason to believe it to be true he would be described a state of mind which was wrong in his having knowledge of that matter. It may be noted that the words used in section 104 of the Act are "went to the knowledge of an Inspector" and not "when the Inspector was aware that the correctness of the information". If the legislature intended that an enquiry should be made by an Inspector and only if he is satisfied about the correctness of the information he should make a complaint, the words used by the legislature would have been "within three months of the day on which the Inspector is satisfied about the commission of the offence". Both misfeasance and knowledge denote a state of mind. In order to be satisfied or in order to have knowledge there must be some basis. The basis may be, as we have said above, either what is seen or what is heard or the information received. Knowledge is that state of mind when the person believes a thing to be true or has no reason to believe that it is not true. The state of misfeasance is reached only when the man is certain after deliberate consideration over the matter that thing exists beyond all doubt. When a person gets fully determined either by the subjective process of deliberating over the matter or by the objective process of making an enquiry or by seeing the thing himself the stage of knowledge comes and the stage of misfeasance goes. In our judgment the word "misfeasance" has not been proposed used in section 104 of the Act because as the Inspector has only to make allegations by lodging a complaint the misfeasance about the

intention or otherwise of the allegations has got to be that of the court. In our opinion the word "knowledge" has been used in the sense that if the Inspector himself was an offence being committed or if he received information which by him was raised to detection, a would amount to his having knowledge of the offence. It is true that the Legislature did not use the word "information" but for that there are two obvious reasons. The first one being that if the word "information" was used that would not have included a complaint being made on the basis of what the Inspector saw for himself as the word "information" would not have comprehended cases where the Inspector saw an offence being committed with his own eyes and in respect of which he did not receive any information and secondly because it was not expected that he would see or receive information including the one which he knows to be untrue. It has been contended by the learned Government Advocate that an Inspector does not depend on what else he had knowledge of the offence and his statement on that point should, therefore, be final. We are not prepared to accept this argument. We have already pointed out that section 186 of the Act is a provision by means of which the punishment of a crime is barred under certain circumstances. By other words it confers an immunity on an offender in cases where a complaint is not made within the period of limitation provided. Consequently it is a matter which goes to the root of the punishment of the crime and in every case in which the punishment is challenged by an accused person it is the duty of the court first to determine whether or not the complaint was filed within three months from the date of knowledge to the Inspector. It is obvious that such a question has got to be determined in an objective manner and on the basis of the evidence produced by the parties

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and cannot be left to be concluded by the statement of the Inspector. It is open to the court not to believe the statement of the Inspector that he had received knowledge on a particular date. The statement of the Inspector is only a piece of evidence which may or may not be believed. The Inspector cannot usurp the functions which the legislature has vested in courts. It is not difficult to visualize as to what would be the consequences if the question as to whether or not the Inspector had knowledge of the commission of the offence on a particular date were to be concluded by the statement of the Inspector. In the first place he would become a judge of his own cause and from a witness or a complainant would ascend to the position of a judge. Besides even in cases in which he has been inactive or delinquent and has filed a complaint beyond the period prescribed he would be able to confer the jurisdiction on the court to try the case by falsely stating that his enquiries concluded and he acquired knowledge of the offence on some date within three months of the filing of the complaint. In other words the jurisdiction of the court to try or not to try a case would not depend upon the factual position in the case but upon the mere will of the Inspector. We have no doubt in our mind that that is not what the legislature intended by creating section 116 of the Act and it is not possible to stretch the meaning of the word "knowledge" so as to include an earlier enquiry and satisfaction of the Inspector that the offence was actually committed. It is true that an Inspector like any other complainant should not file a complaint merely on suspicion or hearsay or on such flimsy or tenuous as his knowledge but section 116 of the Act requires not just that the import of the word "knowledge" that the filing of a complaint should be preceded by an enquiry and only after the Inspector is satisfied that the offence has been



actually committed he should file a complaint. In fact a complainant is not expected to do so under the general law and nothing has been pointed out to us in the Act as does that the same differs from the general law in that matter. To acknowledge and require into the truth of an allegation is not the function of a complainant but that of the court though a complainant is not expected to rush to a court unless he believes that the allegations he is making or court are not false. There is a difference of degree between "believe" and "suspect." For belief there need not be a certainty which is required in the case of satisfaction. The Inspector need not have full satisfaction that the offence has really been committed in order to file a complaint. If he believes, on information, and thus understands that an offence has been committed or has no reason to disbelieve the information he should file a complaint and leave it to the court to decide whether or not the information received by him is true and whether or not in fact the offence has been committed. Can it be said that in a case where there is good evidence to show that an offence has been committed but the Inspector does not personally believe that evidence or does not feel satisfied about its correctness he can refuse to file a complaint and thus deprive the court of adjudicating upon that matter? It will be his duty to put before the court the evidence that is in his possession and leave it to the court to decide whether that evidence should be believed or not. He cannot himself assume the role of the court and decide for himself whether or not that evidence is correct, and in cases where he comes to the conclusion that it is not correct, not to file a complaint. Such a course would be much in excess of his functions and if he does not file a complaint only on the ground that he does not personally believe that evidence he would be committing a serious dereliction of duty. All

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that is required on his part is that he should not rush to court with frivolous and vexatious cases. The law only requires that he must not know *de iure* that in every case in which there is some evidence to support the charge. For standing such inquiries it appears to us, that it is not necessary for him to hold an inquiry and we have already said above that section 116 of the Act or any other section in the Act does not require him to do so. This does not mean that he cannot hold an inquiry at all in order to find out what evidence he will produce in court or whether the case is one of a frivolous or vexatious case. All that we intend to say is that the holding of an inquiry is not a compulsory procedure in his requiring knowledge of the commission of the offence.

To know is not necessarily to have precise knowledge of. Knowledge of circumstances sufficiently leading to the conclusion that the thing is the sort of thing which will suffice. We find support for our view from the case of *National Bank of Australia v. Menzies* (1). In that case the question was whether the Bank knew that its defaulter was insolvent and the test adopted by the Privy Council was that if the information received by the Bank was such that ordinary men of business would on it, have concluded that the defaulter is unable to meet his liabilities, knowledge of such facts would be imputed to the Bank. The following words from that judgment are very helpful:

"Their Lordships estimate that if the creditor who requires payment has knowledge of certain matters from which ordinary men of business would conclude that the defaulter is unable to meet his liabilities he knows, within the meaning of the Act, that the defaulter is insolvent."

We need not inquire much whether *Bellamy* used

the term "insolence," as is suggested by a subsequent passage in his evidence, as a sense concept. (The whole Brown's evidence is worth for English notes.) It is sufficient that he knew the facts which ought to have shown him clearly enough that Brown could not do so."

In *How With Others: Law Lessons* under the heading "knowledge" and "belief" the following is given:

"Knowledge" is nothing more than mere facts, belief, and is distinct from "belief" in that the latter includes things which do not make a very deep impression on the memory. The difference is definitely merely in degree.

The meaning of the words "belief" and "knowledge" as defined by lexicographers will show the there is distinct and well-defined difference between them. "Belief" is defined by Webster to mean to believe, trust or confidence; and by the Century Dictionary, to accept belief in: to be persuaded upon evidence, argument and deductions, or by other circumstances other than personal knowledge. "Knowledge" according to Webster, is the act or state of knowing, the perception of facts, that which is or may be known according to the Century Dictionary it means acquaintance with the things ascertained or ascertainable, specific information.

If an Inspector has specific information or information which he has no reason to doubt he will be imparted the knowledge. In *Inspector's Exam. (f)* the word "knowledge" came up for interpretation in connection with a criminal case and the learned judge observed as follows:

"When going into a metaphysical discussion of the nature of knowledge, we may say that for

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practical and legal purposes "knowledge" means the state of mind constituted by a person with regard to existing facts which he has himself observed, or the existence of which has been communicated to him by persons whose veracity he has no reason to doubt.

We find ourselves in agreement with this view. The learned Government Advocate placed reliance upon the case of *Gudhar Pandit v. Emperor* (1) and has drawn our attention to the following passage in the judgment:

'No doubt a man is presumed to intend the natural and probable consequences of his own act, but the presumption of intention must depend upon the facts of each particular case, and "knowledge", as used in clause (1) of section 100 I. P. C. is a word which imports a certainty and not merely a probability.'

In that case the learned Judges were interpreting the word "knowledge" as used in section 100 of the Indian Penal Code and all that they held was that before an accused person can be convicted by admitting knowledge of a particular thing that knowledge must be proved beyond all reasonable doubt. That view, in our opinion, is clearly distinguishable because whereas an accused person can only be convicted if the fact, found against him, have been proved beyond all reasonable doubt, it is not the function of the Magistrate for filing a complaint under the Act to reach a certainty in his mind that the allegations are correct. We have already said above that if he has no reason to disbelieve the information and there is evidence it is his duty to submit a complaint.

The learned Government Advocate next placed reliance upon the case of *Prabhu Lal Deyan v. The*  
 (1) A.I.R. 1958 No. 148.

State (1). The facts of that case were different from the facts of the case before us as would be apparent from the following observations of the learned Judge:

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"The contention is unavailing because, as I said, the consideration of the whole question was deferred in view of the pending dispute before the Industrial Tribunal, and in view of the same it could not be said that the Factory Inspector had cause to know that it was an offence. The lower part of the contention therefore does not survive so far as the prosecution itself is concerned. The complaint was made by the Factory Inspector within three months of the written order, dated 25th January, 1951 and it is, therefore, not barred under section 106, Factories Act.

The prosecution having been launched for failing to comply with the said order the question of the Factory Inspector having cause to know of the offence earlier, namely, on his visit to the factory on 21st December, 1950 and the complaint being required to be filed within three months of the date does not really arise, and Mr. Shah has also not pressed it on this ground. The complaint is filed for the disobedience of the order, dated 24th January, 1951, for which the limitation is six months and since it was filed within that period, it is perfectly within time."

In the end the learned counsel for the State placed reliance upon an unreported decision of our brother Datta, in *S. P. Mishra v. State* (2) and the following two passages were brought to our notice:

"Whether he had knowledge or not can be proved by him alone; if he did not believe the information so received to worth his trouble

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believe arising upon it, he did not think it is knowledge. It is for him to decide whether to make a complaint or not and to ascertain what legal evidence there is in support of it, and before he decides to make a complaint he must know as a matter of fact that the offense has been committed. The law contemplates that he should make a report on knowledge of facts only, not on suspicion or hearsay. This practically means that he must have personal knowledge. So if he receives information from some one, he may either believe it to be true or verify its truth by an enquiry. He is not bound by any law to make a complaint even if he does not believe it so he may be has a right to insist on making an enquiry, so as to acquire personal knowledge and the period of limitation must commence from the date of such knowledge.<sup>10</sup>

With great respect to the learned Judge we are not prepared to go as far and for the reasons which we have already given above we are unable to accept the proposition that whether or not an Inspector has knowledge can be proved by him alone and that he must acquire personal knowledge before he can file a complaint. We are also unable to subscribe to the view that even though there be evidence in support of the information or the charge an Inspector is not bound to make a complaint if he has no personal knowledge that the offence has been committed. In our judgment the knowledge of section 108 of the Act does not warrant any such conclusion. Besides it is well known that while interpreting a statute the interpretation which does not result in defeating the object of the Act, or the provisions being interpreted, should be adopted and effect should be made by courts to implement the purpose or the object of the Act, or the provisions,

see Fourth Singh v. Bachhatar Singh (1) and I see, likewise, of *Parasram v. S. Teja Singh*, (2). We have already, and shown that it was the clear intention of the legislature that, if a complaint is not filed within the period of limitation provided for the prosecution of the case to try that case would be lost and the person who is supposed to have committed the offense would get an immunity from prosecution on that charge. If we take a contrary view the result would be that the object of the provision would be defeated and, even though a complaint may be heard in time and thus the accused person may have obtained immunity from prosecution he would be liable to be tried if the law-power finally disposed that he received knowledge on a date within three months of the filing of the complaint. It may also be noted that in a criminal matter if two interpretations are possible the one in favour of the accused person should be accepted. For the reasons mentioned above we are of the opinion that under the provisions of section 105 of the Act an Inspector must file a complaint, if he saw the commission of the offense himself within three months of the date of seeing, and if he received information which he could have no reason to disbelieve, within three months of the receipt of the information. Even in cases of information which he does not believe he must act promptly and if he has to make an enquiry he must complete it within such time as to file a complaint within the time provided by law. In our opinion it does not matter if he files a complaint on the basis of a particular information, though after an enquiry the starting point of limitation would be the date of the information and not the date of the conclusion of the enquiry. It would be noticed that the legislature did not require a complaint to be filed immediately or within a few

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## SUPREMACY COURT

## APPELLATE CIVIL

*Before the Hon'ble Mr Justice Kapur, the Hon'ble  
Mr Justice Mookerjee and the Hon'ble Mr  
Justice Shah*

THE CENTRAL TALKIES LTD, KANPUR  
(Appellants).

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DWARAA PRASAD (Respondent).

[On appeal from the High Court at Allahabad.]

**B. P. (Temporary) Control of Rent and Eviction Act, 1947**  
or 1947) 3 and Order of Eviction Proceedings 1948, 1 (1947)—  
Interpretation of—District Magistrate's order includes an  
Additional District Magistrate.

In a 3 Rent Control and Eviction Act, no suit for the eject-  
ment of a tenant could be filed without the permission of the  
District Magistrate, except on one or more of the grounds speci-  
fied in the Act.

Where a suit for ejectment was filed on the permission of  
the Additional District Magistrate, the defence raised was that  
the suit was incompetent in the nature of permission of the  
District Magistrate, had not been obtained.

The High Court in second appeal having rejected the one  
ground on an appeal in the Supreme Court.

Held, that the District Magistrate within the meaning of s.  
10 of the Act read with s. 10(1) of the Code of Criminal Pro-  
cedure includes the Additional District Magistrate and no  
special authorisation by the District Magistrate is necessary to  
empower the Additional District Magistrate to exercise powers  
under s. 10.

Held further, that the District Magistrate within the mean-  
ing of the Act is not a person designated as person designated  
a person who is selected to act in the person capacity and  
not in his capacity as a judge.

*Parthasarathi Swami v. Laxminarayana Rao* (1) applied.

(1949) 1 L.R. 111 at 112 (1949).

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First Appeal on 224 of 1975 from a decree and judgments dated the 25th September 1975 of the Mukden High Court in First Appeal no. 224 of 1974.

The facts appear in the judgment.

*J. F. Pichon-Riviere* Solicitor and *G. B. Pothol* Senior Advocate *Nianwei Ltd.,* Appellant, were there for the appellant.

*X. C. Guertgen* Senior Advocate (*Si N. Andro, J. B. Deschamps* and *P. L. Folsa*, Advocates of *Moussy* *Rapporteur* *Narain S. Co.* were there for the respondents.

The following judgment of the Court was delivered by—

**THE CHIEF JUSTICE.**—This is an appeal against the judgment and decree of the High Court of Mukden with a certificate granted by the High Court under Art. 120 (1) (3) of the Constitution. The High Court reversing the decision of the trial Court, decreed the payment with its expenses against the appellants and also awarded damages to the plaintiff-respondent at the rate of *Rs* 500 (500) per month. The suit was filed by the respondent, *Baba Dewa Prasad* against the appellants, *Central Textiles, Ltd.,* *Kangar* and *Lala Rana Narain Gang,* the Managing Director of the Company.

The facts briefly stated are as follows: *Dewa Prasad* was the sole owner of a plot of land no. 53/22 (old no. 75/22) situated in Collinogang, Kangas. In 1955 an agreement of lease was executed by four persons in favour of *Lala Ramabharada*, the predecessor-in-title of *Baba Dewa Prasad*, by which the four tenants took over on lease a hall and other constructions, which the lessee agreed to build at a cost of *Rs* 14,000 within four months. It was agreed that, if the lessee was required to spend an amount in excess of *Rs* 14,000, he would be entitled to interest at the rate of 12 annas per cent per month from the second party till the end of tenancy. The

quency was three months or more, and the period of the infection was fixed at 3 years in the first instance. This statistic, accompanied with variations in the amount of rent, till the year 1948, and on January 13, 1949, David Pined sent a letter to the defendants that the period of lease was to expire on February 18, 1949, and that the General Talleres, Ltd. should vacate the premises by that date. The defendants did not vacate the premises, and a suit for eviction was filed against the General Talleres, Ltd.

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During the pendency of this case, the United Provinces (Benares) Control of Arms and Explosives Act, 1946, pertinent to the judgment, on the Eviction Act came into force. Under s. 3 of the Eviction Act, permission of the District Magistrate was required to file in any Civil Court a suit for the eviction of a tenant, except on grounds which were enumerated in the section. Admittedly, this was was filed on a ground which was not enumerated in the section and Eviction Appeal, writs etc. He then applied to the District Magistrate for permission to open the Control Toolkit Ltd. from the premises, and permission was granted by the Additional District Magistrate (Rural Area) on July 1, 1948. It is not necessary to state the plea which was taken by the defendants in the newly filed suit, because the only point argued before us was that the suit was incompetent, because permission of the District Magistrate as required by s. 3 had not been obtained.

The Interstate Bench of the High Court held that the suit was competent. The two learned judges, who heard the appeal, reached the same conclusion, though on slightly different grounds. Rameshwar Dutt J held that the Addressed District Magistrate, who granted remission, was empowered by the Provincial Gov-

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crimes under s. 14(2) of the Code of Criminal Procedure as to whether all the powers of a District Magistrate under the Code and all the laws for the time being in force and the requirements of s. 1 were complied with by Magistrate, L.A. J., from the concluding date the District Magistrate by transferring the case to the Additional District Magistrate (Rural Area) had authorized him to perform his functions under the Act in this behalf and that the Additional District Magistrate being thus included in the definition of "District Magistrate" under s. 1(4), was competent to grant the permission. Concerning, therefore, that the writ was filed with the permission of the District Magistrate as required by the District Act, the Divisional Bench held that the writ was incompetent.

It may be pointed out that, in fact, the application for permission was made over by the District Magistrate to Mr. Hukh Nana, who was then an Additional District Magistrate; but the issue was the one back to the District Magistrate acting in a judicial capacity, because he had been approached on behalf of the defendants. The District Magistrate thereafter passed an order on February 11, 1948, in the following effect—

"Transferred to Additional District Magistrate (R. A.) for disposal."

The application for permission was disposed of by Mr. Birpal Singh Seth, Additional District Magistrate (Rural Area), on July 7, 1948. This officer, who was previously a Civil Magistrate, Kangra, was appointed an Additional District Magistrate in succession on 1/10/47-48, dated 22nd May, 1947. The material portion of the notification read as follows:

With effect from the date on which he takes over charge Shri Birpal Singh Seth, Civil Magistrate

crisis, Karpman is appointed Vice President Executive  
Secretary.

(c) under sub-section (2) of section 10 of the Code of Criminal Procedure, 1908 (Act V of 1908), to be an Additional District Magistrate of Kangra District, with jurisdiction extending over the whole of the said district and with all the powers of a District Magistrate under the said Code and under any other law for the time being in force. □

The appellants contended before us that both the reasons given by the Divisional Bench of the High Court were not valid, and that the suit was not brought in accordance with the Evidence Act. At first, the appellants wished to raise a question as to the validity of the notice, but during the course of the arguments, that ground was expressly abandoned. The case was then argued only on the footing that the permission given by Mr. Justice Sivasami did not comply with s. 4 of the Evidence Act.

The material portion of s. 3, as it stood on the date just cited, read as follows:

No man shall, without the permission of the Texas Magistrate, be filed in any civil court against a person for his evasions from any sworn indictment, except on one or more of the following grounds:

"*Excess Magazine*" is defined by a § 10 of the Act, which reads:

"District Magistrate" includes, as often authorized by the District Magistrate or persons one of his functions under this Act.

The exposure of the appellants was that the District Magistrate mentioned in s. 3 was a person designated.

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and that either he or an officer authorized by him to perform his functions could grant permission. In coming to this, in view of the provisions quoted above and in view also of the provisions of s. 1 (2) of the Code of Criminal Procedure no Additional District Magistrate was competent to grant the permission, unless authorized to do so by the District Magistrate. The order of the District Magistrate by which the case was made over to the Additional District Magistrate (Rural Area) was characterized as a mere transfer and not an endorsement. It was concluded that a transfer could only take place in a person possessing jurisdiction, and that jurisdiction under the present Act was confined only to the District Magistrate or an officer authorized by him. The transfer of the case, it was contended, did not constitute such an endorsement. Rahman was placed on the decision of learned Single Judge of the Allahabad High Court reported in *Kishor Singh v. Meel Chand* (3), and on the decision of the Nagpur High Court referred to therein, *P. K. Tare v. Bhopale* (2).

Section 19 of the Code of Criminal Procedure, at the relevant time, provided as follows:

"19(1) In every district outside the presidency towns the Provincial Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

(2) The Provincial Government may appoint one Magistrate of the first class to be an Additional District Magistrate and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code or under any other law for the time being in force, as the Provincial Government may direct."

The notification, which was issued about the Bhopal Secret Satin and which has been quoted already, issued to him, with all the powers of the District Magistrate under the Code of Criminal Procedure as well as under any other law for the time being in force. He was then competent to deal with an application under the Act for permission to file a civil suit without special authorisation from the District Magistrate. Learned counsel for the appellants contended that the definition of "District Magistrate" clearly showed that in addition to the District Magistrate, only an officer specially authorised by him could act under the Bhopal Act, and he referred to sub-s. (2) of s. 1 of the Code of Criminal Procedure, which provides:

"It extends to the whole of British India, but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

The argument was that the special jurisdiction created by the Bhopal Act was not affected by s. 1(2) of the Code in view of the provisions of the subsection. The argument overlooks the words "in the absence of any specific provision to the contrary", and because there is in the Code of Criminal Procedure such a provision as s. 1(2), sub-s. (2) of s. 1 is excluded, and in Additional District Magistrate must be regarded as possessing the powers under any other law including the Bhopal Act.

The argument that the District Magistrate was a *persona designata* cannot be accepted. Under the definition of "District Magistrate", the special authorisation by the District Magistrate had the effect of vesting

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In view of the above, it is hardly necessary to go into the reasons given by Judge Morris Linn, J., but even those reasons are with all due respect, equally valid by the act of transferring the case to the Additional District Magistrate, the District Magistrate must be deemed to have authorized him to exercise his powers under s. 5 of the District Act. However, it is not necessary to rely upon this aspect of the case, because, in our opinion, s. 11(2) of the Code of Criminal Procedure gave ample powers to Mr. Bayton. Before him to record permission for bringing the suit, and the order of the District Magistrate, even if treated as a transfer, was valid.

In the result, the appeal fails, and is dismissed with costs.

*Appeal dismissed.*

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## APPELLATE CIVIL

Before Mr. Justice Beg and Mr. Justice Arundhan

NARINCH DÁS and ANOTHER (Appellants)

v.

PARMESHWARI DAS (Respondent)

**Provision of lease for non-payment of rent—(a) when available—(b) when not available, meaning of—Transfer of Property Act, 1902, s. 115.**

The provision of this Court, under s. 115 of the Transfer of Property Act is to relieve the tenant from the liability of lease for non-payment of rent up to possible the extent of which rent is the decrease of the rent, and may well be deemed to a lease who does not come with their hands or main all kinds of necessary, necessary or inevitable place, rent, a view to defer the disposal of the case or to benefit the tenant.

The nature of rent which the tenant is bound to pay, or to rent, is a condition precedent for the grant of the equitable relief against rent due up to the date of tender, unless the relief is granted, it seems to of inevitable and so on occurred. The relationship of lease and tenant is otherwise, deemed to have released all through and the, amounts due even after the for tenant alleged or determination of the lease accepted as the damage for use and occupation' that is rent due' and it is not open to the tenant to claim that destruction, and placed the obligation only in the extent of rent due up to the date of the failure or determination of the lease.

*Guaranteed Property Ltd. v. Director, Perak (1)* relied on.

Special Appeal no. 444 of 1980 from a decision of 1, Justice J. In Special Appeal no. 444 of 1980 decided on 10th October 1980.

The facts appear in the judgment.  
*Sabir Khan Ibrahim*, for the appellants.  
*Amrita Prasad* for the respondent.

The judgment of the Court was delivered by—

**BEG, J.**—This is a defendant's Special Appeal. It arises out of a suit for recovery of rent and damages and

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the provisions of the lease in suit after the removal of the construction which threaten by the defendants. The respondent is the landlord of the premises in question. The instrument of lease which is alleged to be the basis of the recovery of the defendants-appellants was executed on the 25th of July 1943 for a period of 50 years on an annual rent of Rs.100. One of the terms of the lease was that the lessee would be liable to pay rent every third month, and that, in the event of the lessee failing to comply with the term, he would be liable to termination even before the expiry of the period for which the lease was granted, and the lessor would then have the right to get possession of the premises by removal of the construction erected thereon. The rent fell into arrears after the 25th of July, 1948, and a sum of Rs.100-0-0 became due for the period 25th of July, 1950 to 15th November, 1951. The landlord, accordingly, sent a notice on the 22nd of November, 1951, terminating the lease with effect from 25th December, 1951, and demanding the arrears due. The arrears of rent having not been paid the present suit was brought by the plaintiff-respondent for the possession of the lease after removal of constructions standing thereon, the recovery of the arrears of rent as well as damages from the 25th December, 1951, the date of the determination of the lease, up to the date of the institution of the suit and for costs.

The suit was removed by the defendants on several grounds. It was alleged that the original complaint had been altered by the parties with the result that there was misjoinder of the causes. It was further alleged that under the new contract it was agreed that defendant no. 1 would no longer be the owner of the plant and that the defendant no. 2 would be substituted in its stead in place of defendant no. 1. Defendant no.



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was, therefore, no longer liable for rent. Further no valid notice to quit was given to defendants no. 1. The tenancy had not, therefore, been determined and no question of paying damages arose. Pleas relating to under-rentation of the rent and insufficiency of counter were also taken. The trial court recorded findings in favour of the plaintiff and decreed the rent.

The defendants-appellants' first appeal having been dismissed, they filed a second appeal in this court. The second appeal was dismissed by a single Judge of this Court who, having granted leave to the appellants, the Special Appeal was filed by them.

Before us the learned counsel for the appellants has advanced two contentions. The first contention is that the notice of apportionment issued by the respondent was not a valid one, and the second contention is that in any case, the defendants were entitled to the protection of section 114 of the Transfer of Property Act.

The first plea can be disposed of summarily. This plea was given up by the defendants in the trial court. It was not agitated by them either at the stage of first appeal or even at the stage of second appeal. Further, there is no ground mentioning this plea in the memorandum of Special Appeal filed by them. Under the circumstances, we decline to entertain this plea.

So far as the second plea is concerned, learned counsel for the appellants has relied on the provisions of section 114 of the Transfer of Property Act (IV of 1882). Section 114 provides as follows:

"Where a lease of immovable property has been determined by forfeiture for non-payment of rent, and the lease was so upon the lease, &c, at the burning of the suit, the lessee pays or tenders to the lessor the rent in arrears, together with interest thereon

and his full area of the site, as given such security as the Court thinks sufficient for making such payment within fifteen days, the court was in law of making a decree for ejectment gone in order achieving the lease against the defendants and that upon the lease shall hold the property leased as if the forfeiture had not occurred."

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The present was was filed by the respondents on the 21st of January, 1935. After a number of hearings had been gone through, it was fixed for final hearing on the 11th February, 1935. It was on that day that the defendants for the first time gave up all the plots and claimed benefit of section 114 of the Transfer of Property Act. Even then they did not deposit the full amount of arrears of rent together with costs and interest though they had obtained orders twice for depositing such arrears. The orders before were of up to date that in order to enable the defendants to invoke section 114 of the Transfer of Property Act in those leases, they should have deposited the entire amount of arrears of rent which was due from them up to the 21st of February, 1935. The contention advanced before us on behalf of the defendants-appellants is that the notice, dated 22nd of November, 1933, given by the landlord having determined their tenancy with effect from 25th December, 1933, they became respondents thereafter. The amount due from them after the 25th December, 1933, cannot therefore be treated as arrears of rent. What section 114 of the Transfer of Property Act requires is that the tenant should deposit the rent as arrears, together with interest thereon, and his full area of the site. The contention of the appellants is that the tenants, having been declared by notice the tenants thereafter became liable only for damages for use and occupation of the premises.

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and one for rent. Under the circumstances, the deposit of the amount made on behalf of the tenant should be deemed to be a sufficient compliance with the provisions of section 114 of the Transfer of Property Act.

We are not inclined to accept the interpretation of the term "rent" in section 114 of the Transfer of Property Act. It appears to us that while using the term "rent" in this section the idea of the Legislature was to disengage all defaulters and breachers on the part of the tenant and to treat him as a full-fledged tenant for the purposes of the act. This section is designed to provide a relief against forfeiture. It, therefore, rests its force and pivots on the assumption that no forfeiture has taken place and the tenancy between the parties has continued to subsist. Thus for example the tenant is described in the section as a *lessee* although, as a result of the notice given by the landlord, the tenancy has been dissolved and the tenant has, therefore, ceased to be a *lessee*. If, therefore, this section is interpreted in the manner suggested on behalf of the appellants and the notice of ejectment given by the landlord is deemed to be effective for the purposes of section 114 of the Transfer of Property Act, the word "lessee" used therein will not cover a person whose tenancy has been terminated. On this interpretation, therefore, the defendants would be out of court and would not be able to avail themselves of this section which is relied on by them. The defendants cannot have it both ways.

The relief against forfeiture provided in this section is obviously based on equitable principles. The purpose of this section appears to be to extend a special indulgence in favour of a tenant who is prepared to purge himself of his conduct as a promissory defaulter by making an honest offer to clear off his entire liability. His conventional readiness to wipe out his legal, then

he, therefore, made a condition precedent to his grant that the court might revoke this action in his favor. A more reasonable construction of this action would, therefore, be to interpret the word "grant" as such a grant as to include in it the entire interest which the tenant would be liable to pay to the landlord by way of rent up to the date of tender. In other words, his liability for rent due will be determined on the supposition that he had continued to remain as tenant and the inference of his rights following the purported discontinuance of his tenancy, had not taken place. This construction would also be borne out by the fact that under this action the legislature required the tenant not only to pay up the arrears of rent but also secured as well a full cost of the suit. It would, therefore, appear that this action tends to make the tenant liable even for the payment of amounts liability in respect of which is incurred by him as a result of the suit or during its pendency. The view taken by us would also find support from *Simmentals Proprietors, Ltd. v. Dundee Petroleum* (1). According to the view taken in some Madras cases even the *zamia*, which is barred by the law of prescription, should be included in the amount deposited by the tenant. See *Canalene Elips v. Krishna Upda* (2), *Gurjar Finance Pn v. Panchala Nanka* (3) and *Janak Palitoki v. Bai K. Anandji* The journal (4).

We would, therefore, hold that the tender made by the tenant being insufficient, he remains well himself of the benefit of section 114 of the Transfer of Property Act.

The matter can, however, be approached from another angle also. The lower courts have rejected the proposition

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ges. of the same would be paid regularly, and, in the event of default, he was liable to incur the penalty of having to vacate the premises. In the present case, therefore, the parties themselves had attached special importance to the term relating to regular payment of rent and had also provided a penalty for its breach. Under the circumstances, in the present case, the court while declaring the rent for enjoyment, is merely enforcing a term which was a consideration of the contract between the parties and which was agreed to by the tenant himself. The defendants have been found to be clearly in persistent default for over three years. Their conduct throughout cannot be said to be either honest or bona fide. The trial court, therefore, though it is not a fit case for the exercise of the discretionary power of the court in favour of the appellants. The findings of the trial court in this regard were upheld concurrently by two courts. Their conclusions cannot be characterised as either perverse or unreasonable. As per rent, the court will be loathe to interfere with the exercise of a discretionary power at this late stage. For this reason also we are of opinion that the plea of the appellants based on section 114 of the Transfer of Property Act must be repelled.

We, accordingly, are in substance in this appeal and dismiss it with costs.

*Appeal dismissed*

IN J  
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## CRIMINAL REVISION

*Before Mr. Justice Malhotra*

## THE MUNICIPAL BOARD, BANGOR.

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B

## BILW SINGH

**Code of Criminal Procedure, 1898, ss. 9, 43.—Order of Sessions Judge.—**Whether district judge chief or Sessions Judge.—Whether the seat of an Assistant Sessions Judge an appeal criminal case is that of Sessions Judge.—High Court, whether will interfere in criminal revision direct against the order of an Assistant Sessions Judge passed in appeal.

By s. 43 of the Code of Criminal Procedure the High Court or the Sessions Judge may call for and examine the proceedings before any inferior criminal court or a case sent to him, and as to the proceedings, regulate the progress of any inquiry, sentence or order.

The High Court, as a rule, does not interfere except in cases where the Sessions Judge has been approached in this regard, the rule however may be relaxed in special cases.

Where an Assistant Sessions Judge disposed of an appeal on a transfer from a Sessions Judge, the question arose whether a revision against the order of the Assistant Sessions Judge could be filed direct, or the High Court without the Sessions Judge being approached in this regard in the first instance.

It is, that the Code of Sessions is for certain purposes first the inferior court and secondly one in the Sessions Judge or Assistant Sessions Judge and further by an Assistant Sessions Judge. For the purposes of s. 43 of the Code of Criminal Procedure the chief of the Assistant Sessions Judge is during term time of the Sessions Judge, when an appeal is considered as an Assistant Sessions Judge it shall be a proceeding before the Assistant Sessions Judge and not before the Sessions Judge. Further the Code of an Assistant Sessions Judge is an inferior criminal court as that of the Sessions Judge.

Consequently the Sessions Judge can exercise a revision against an order of an Assistant Sessions Judge even though paid off as the extent of an appellate jurisdiction.

The High Court would accordingly, not interfere in such cases in revision direct against the order of an Assistant



considered and consequently the revisions were filed directly before the High Court and it was not brought to the notice of the Applications Judge that such a revision was being adopted.

An order passed in a criminal proceeding may be made, filed or quashed in exercise of the inherent powers under section 341-A, Criminal Procedure Code. This section clearly provides—

"Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

The first and the last clauses of section 341-A, Criminal Procedure Code are not applicable to the facts of this case. In other words, this Court would be justified to vacate the orders, dated the 6th September, 1982, and to reject the revisions on the ground that the Sessions Judge had not first been approached and if it is necessary to prevent abuse of the process of the court. If the applicant was guilty of concealment of material facts it was not acting in good faith when full facts were not furnished in the petition, the court would have been justified to interfere by vacating the orders already passed so that no time may have to approach the Court with incomplete facts as already mentioned above the present causes be said to be cases in which the applicant was guilty of concealment of facts. It is a little strange thing that if it was noticed that the Sessions Judge had not been moved, the revisions may not have been admitted but it is a little odd if the revisions were being summarily dismissed on the above mentioned ground, the learned advocate for the applicant would have argued that no revision be before the High Court



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Procedure Code unless the Sessions Judge had, first of all, been approached, yet it was made clear that it was a rule of practice and not the law. As far as the criminal jurisdiction was concerned, both the High Court and the Sessions Judge had concurrent jurisdiction and in exceptional cases the High Court could entertain a revision application even though the sub ordinate court had not first of all been approached. Revision applications made direct to the High Court were thus entertained as there was no illegality and there was no more departure from the rule of practice.

The present revision applications were submitted more than six months back and they were listed for hearing before Sessions J and were thereafter listed before me for consideration whether the orders of admission be revised or not. This question has been thrived out in detail and in fact was argued on two days. When the court had already devoted considerable time over these applications, it will be in fairness that we may devote some more time and dispose them of on merits instead of directing the parties to incur additional expenses in having to go before the Sessions Judge and then to contest the proceedings before the High Court. I find no reason to depart from the view expressed in the Full Bench case of *Shalabala Devi v. Emperor* (1).

As the points raised before me are of great import over all the more, when there is no decision of this Court directly on the point, it is but proper that I should indicate in this order whether the Sessions Judge has the jurisdiction to entertain a revision under section 434, Criminal Procedure Code against an order of the Assistant Sessions Judge passed in the exercise of original or appellate jurisdiction.

Section 435, Criminal Procedure Code provides—

"The High Court or any Sessions Judge or District Magistrate or any Sub-Divisional Magistrate empowered by the State Government in this behalf may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior court."

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The criminal appeals disposed of by the Assistant Sessions Judge under orders which are subject of revision in the present proceedings were against orders passed by a Magistrate Second Class. All the criminal appeals were presented in the Court of Session and the Sessions Judge had transferred them to the Assistant Sessions Judge for disposal. In other words, when the Assistant Sessions Judge allowed the appeals and discharged the opposite parties, he was exercising an appellate jurisdiction. The points for consideration are whether the Assistant Sessions Judge was in the act of law functioning as a District criminal court, secondly, can it be deemed to be an inferior criminal court and finally whether the appeals were a proceeding before an inferior criminal court?

The term "Court" or "Criminal Court" has not been defined in the Code of Criminal Procedure, but section 5 thereof enumerates the various criminal courts. Besides the High Courts and the courts, mentioned under section 5 other than the Code of Criminal Procedure there are the courts of criminal courts, namely—

- I. Courts of Session;
- II. Townships Magistrates







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applicable to *p* proceedings under the Code of Criminal Procedure. In this case their Lordships considered the scope of sections 151, 475 and 476-B of the Code of Criminal Procedure, to lay down whether an order of a Single Judge of the High Court under section 476-B or *P* C was appealable before the High Court itself under clause 15 of the Letters Patent or before the Supreme Court. On consideration of the wording of section 159, *Dr. P. C.* it was held that the Bench of the High Court consisting of a Single Judge was a court subordinate to the Bench of the same court competent to entertain appeals against the appellate decrees or orders of such court. The order under section 476-B, *Dr. P. C.* was passed in a civil suit pending under Article 226 of the Constitution and a final order passed in the writ petition was appealable under clause 20 of the Letters Patent. The decree passed in the writ petition was appealable before the High Court. It was thus held that within the meaning of section 154 (b) *Dr. P. C.* the Bench of the High Court consisting of a Single Judge was subordinate to a Bench of the High Court in which an appeal lay from the appellate decrees of the Single Judge. It is now a settled law that even though the court is one and all the Judges individually have the same powers, for certain purposes they shall be deemed to be more than one court. There would be the Court of a Single Judge and the Court of a Bench of two Judges or more. When for certain purposes the High Court can be deemed to consist of more than one court even though in fact the High Court is one and is constituted of Judges having the same powers there is no reason why a similar view be not adopted with regard to a Court of Sessions constituted under section 9 of the Code of Criminal Procedure.

In the case of a Court of Sessions, all the Judges do not have the same power. The powers of Assistant Sessions

Judges sit. Under section 408 Co. P. C. a person  
 convicted on a trial held by an Associate Sessions Judge  
 can appeal to the Court of Sessions. Consequently, sec-  
 tion 408 Co. P. C. by itself provides that there is a court  
 presided over by an Associate Sessions Judge which for  
 purposes of appeal is distinct from the court of the  
 Sessions Judge to whom the order passed by the former  
 is appealable. Under the provision as the manner the  
 appeal shall lie to the High Court if the sentence of  
 imprisonment awarded exceeds ten years. This will  
 also suggest that the Court of Sessions is for certain pur-  
 poses divisible into parts, parts one presided over by  
 the Sessions Judge or Additional Sessions Judge and  
 another by Associate Sessions Judge. When a Court of  
 Sessions constituted by the sessions division can be sub-  
 divided, we can easily hold that for purposes of section  
 351 Co. P. C. the court of the Associate Sessions Judge  
 is distinct from the Court of the Sessions Judge. To  
 make this point more clear it may further be claimed  
 that the framers of the Code of Criminal Procedure has  
 made a distinction between a Court of Sessions and  
 the Sessions Judge, Additional Sessions Judge or Asso-  
 ciate Sessions Judge. Wherever a provision is made for  
 the review of a case or for filing an appeal or retri-  
 mon it is laid down that the proceedings shall be made  
 to or the appeal or review shall be filed before the  
 Court of Sessions; but whenever a provision is made for  
 the hearing of the case by the Judges of the three dis-  
 posits, they have been referred to as the Sessions Judge,  
 Additional Sessions Judge or Associate Sessions Judge.  
 In other words, therefore, though, legally speaking there  
 is only one Court of Sessions, there are, for purposes of  
 administration of justice, as many courts as there are  
 Sessions Judges in the district. One court shall be pre-  
 sided over by the Sessions Judge, others by Additional  
 Sessions Judges and the rest by Associate Sessions Judges.

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Then, for purposes of section 413, Cr. P. C. the Court of an Assistant Sessions Judge, shall be distinct from that of the Sessions Judge.

When an appeal is transferred to an Assistant Sessions Judge it shall mean that stage by a proceeding pending in the Court of the Assistant Sessions Judge, irrespective of any order which the Sessions Judge may have himself issued at an earlier stage. At whatever stage the appeal is transferred to an Assistant Sessions Judge, the further hearing of the appeal in the Assistant Sessions Judge shall continue to a proceeding pending in his court.

The law poses for consideration as to whether the court of an Assistant Sessions Judge exercising appellate jurisdiction in appeals provided before the Court of Session and later transferred to the Assistant Sessions Judge can be regarded as an inferior criminal court.

Section 413 of the present Code corresponds with section 226 of the Code of 1872 and in that section the words "and were" were *subordinate* to such Court or Magistrate. These words were replaced in section 413, Cr. P. C. by "an inferior Criminal Court." It must therefore be presumed that the legislature altered the law for some well defined purpose, in other words the scope of section 413, Cr. P. C. cannot be restricted to orders passed by courts subordinate to the court exercising revisional jurisdiction.

The meaning of the word "inferior" in its application to the Court of Magistrates (then not of the Court of Assistant Sessions Judge) was considered by our High Court in *Queen Empress v. Lashari* (7). Calcutta and Bombay High Courts have also adopted the same view. In *Queen Empress v. Lashari* (1) it was observed that the word "inferior" had been used in the new Code to mean the rulings in the effect that the District Magistrate was not subordinate to the Sessions Judge and in





Court of Session within of course, the sentence awarded extends four years. Appeals against the judgments of Assistant Sessions Judges can be heard by the Sessions Judge or by the Additional Sessions Judges. The ordinary rule laid down in section 494 Cr. P. C. therefore, is that appeals against the decisions of the Assistant Sessions Judges shall lie to the Sessions Judge, though in exceptional circumstances the appeals shall lie to the High Court. Consequently, for all practical purposes, the Court of an Assistant Sessions Judge is an inferior criminal court with reference to the Sessions Judge.

The learned counsel for the applicants has, however, urged that the above rule can be applied to only those cases which do not exercise a concurrent jurisdiction over the subject-matter in dispute, that is, the matter sought to be decided by the higher court is exercise of the concurrent jurisdiction under section 425, Cr. P. C. The suggestion thus made is that inferior or superior-ity of the court should depend upon the subject-matter of the decision of the court and not by its extending less powers, or being subordinate to another court, in other words the court is not inferior when both the courts exercise concurrent jurisdiction in the matter. Such was the view expressed in *Yates v. Yates* (1) but this decision has been overruled by a Full Bench of the same High Court. Further, the adoption of such a view will lead to anomalous situations namely, that we shall be applying different rule to Assistant Sessions Judges, a rule which cannot be applicable to Magistrates. Magistrate First Class and District Magistrates have the same original jurisdiction as other courts, a case which is being tried or has been tried by a Magistrate First Class could also be tried by the District Magistrate and appeals against the decisions of both would lie to the Court of Session. If the inferiority of the court depended upon the subject-matter of

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the original proceedings, the Court of a Magistrate first class shall be deemed to be subordinate or inferior to that of the District Magistrate in so far as the original trials are concerned and a petition against an order of a Magistrate first class cannot lie before the District Magistrate. The legislature did not leave such an impression when it enacted section 428 Cr. P. C. This above rule cannot, therefore, be applied to Magistrates. For that reason it will not be proper to make this rule applicable to the Court of Assistant Sessions Judge.

To sum up, a Criminal Court 'A' is, for purposes of section 423, Cr. P. C., inferior to another criminal court 'B', if 'A' is subordinate to 'B' or appeals against the decisions of 'A' lie in the court 'B' further, even though under section 5 Cr. P. C. there is only one Court of Session for every sessions division, there are, for purposes of administration of justice, as many courts as there are Sessions Judges including Additional Sessions Judges and Assistant Sessions Judges, and the Court of an Assistant Sessions Judge shall be regarded as distinct from the Court of the Sessions Judge or Additional Sessions Judge. An Assistant Sessions Judge is subordinate to the Sessions Judge [vide section 17 (B) Cr. P. C.] and consequently, for the exercise of revisional jurisdiction the Court of an Assistant Sessions Judge is an inferior criminal court and the Sessions Judge can entertain revision against the orders of the Assistant Sessions Judge even though passed in the exercise of appellate jurisdiction. It is the long standing practice of this court and also of other High Courts not to entertain a revision application directly. The aggrieved party has, first of all to approach the Sessions Judge who shall either make a reference to the High Court or dismiss the revision. If the party does not feel satisfied with the order of the Sessions Judge, he can then invoke the revisional jurisdiction of the High Court. But where the High Court entertains a revision directly



4. Given the party having approached the Sessions Judge there would be no difficulty, but a more departure from the above practice. Further, where the party was not guilty of concealment of material facts, it will not be desirable to set aside the order of admission of the rev. case, even though the Judge was not have admitted the revocation if it was brought to his notice that the party had not approached the Sessions Judge. It is not clear where the revocation has remained pending before the High Court for many months, it will not be desirable to set aside the order of admission already issued.

It is on account of the incomplete report submitted by the office that it did not come to the notice of the Application Judge that the party had not approached the Sessions Judge before moving the High Court in revision. It is therefore necessary to lay down direct instructions to the printers of the office so that no revision may in future be admitted without the Judge being aware of all the relevant facts. The office should continue to submit a report on finalisation and also whether the revision application has been moved by a party to the proceeding or by an advocate. In addition, the office should report whether the applicant had approached the Sessions Judge and on which day did the Sessions Judge dismiss the revision application. If the Reader finds that the report is incomplete he shall ascertain from him the applicant or his advocate presenting the application and bring full facts to the notice of the Application Judge. It will be desirable that the members of the Bar should make a note in the application in clear words whether the Sessions Judge has been approached and if not, why the High Court is being approached directly.

The versions should now be listed below the Book's name and for Good Evening:

**Abstract**

## APPELLATE CIVIL

*Before the Hon'ble M. C. Datta, Chief Justice and Mr Justice Durrani*

**RAM DAS (Appellant)**

**vs.**  
**THE**

**SRI LACHHMAN JAINJI AND OTHERS (Respondents)**

**Enforcement of decree by deposit of title—Rule 41, whether applicable when no decree—Demand of title and deposit title pending—Impose 'a period of title—Distinctions between—General principles on enforcement—Transfer of Property Act 1882 s. 111(5).**

The law on enforcement of decree by deposit of title applies not only to deposit of decree's title but also to that of his successor-in-interest, with this difference that the normal contract of loan is in the latter case, being run with the mortgage loaned too, with his predecessor-in-interest, the loan is granted from title to pay the mortgage in proof of his debt. The question whether title, the loan has paid or these amounts in deposit of title or simply requiring period of it were deposited and be divided on the facts of each case in the light of general principles, viz. (a) his loan against Indragiri, (b) case of pending foreclosure suit on the loaner (c) deposit of title does for commercial and (d) where deposit of title is in wrong, the document must be returned as a whole without making deposit in one part thereof.

Held, reversing the judgments of Chaudhary, J. in *Pras Das v. Sri. Ram Lalchand Jainji* (5) that the facts of this case were not susceptible to the observation that the loaner had simply put the mortgage in proof of her title claim that he had denied her title and there was, therefore, no forbearance of loan.

*Refused to Mohammed Akmal (S) disappointed.*

Special Appeal no. 44 of 1978 from a decision of Chaudhary, J. in Special Appeal no. 278 of 1977 decided on 14th August, 1978.

The facts appear in the judgments.

*K. B. Chakrabarti, for the appellant.*

*Gopal Nath Kaurani and P. N. Raut, for the respondents.*

The judgment of the court was delivered by—

**DEMENT, J.**—By our order, dated 23rd April, 1944 we decided this appeal but we reserved reasons for the order. We are now giving both the reasons.

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The dispute relates to house no. 34180 situate in Cudde River Parish. It belonged to one Susan Jacki Kater. She was the absolute owner. The appellants were her sons. On 2nd June, 1944, she executed a will whereby she bequeathed the house to the first respondent. Dango Passed through whom the first respondent inherited the suit relating to this appeal was one of the brokers of the first respondent. Sometime after her death the first respondent executed suit no. 400 of 1945 in the Court of the Judge of Small Causes at Bangor for recovery of rent against the appellants. In the suit the appellants filed a written statement apparently denying the first respondent's title to the house. The Judge of the Court of Small Causes reversed the plaintiff's claim on the ground that a question of title to immovable property was involved in the suit. After the reversal of the plaintiff on 25th July, 1947, the respondent no. 1 served a notice on the appellants requiring his reasons, on the ground of forfeiture of tenancy rights. The appellants refused to sign and the first respondent instituted a suit for his ejectment. The suit was founded on two grounds, namely, (1) that the appellants had denied the first respondent's title in his written statement in the earlier suit and had consequently forfeited his tenancy rights and (2) that the appellants had committed wilful default in the payment of rent. The appellants controverted the allegations in his written statement and claimed that he had not incurred forfeiture of his tenancy rights and that he had not committed wilful default in the payment of rent. He admitted that he had taken the house on

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rent from Seneca Jacki Kaur has pleaded that after her death Seneca Yasha Wana, one of the respondents in this appeal, took possession of her properties alleging rental to be her daughter and that he had in good faith paid a sum of \$2,100 to her as advance rent for a year. He did not admit that the alleged will was executed by Seneca Jacki Kaur in favour of the respondents as I

The Marshall, who heard the case, held that the will was not a genuine document and appeared to be forged and that the first respondent was, therefore, the owner of the property in suit as an heir of Seneca Jacki Kaur. He also held that the appellant had paid advance rent for one year to the third respondent. In view of his first finding, he did not express any opinion on the question whether the appellant had forfeited his tenancy rights. But he was of the opinion that the denial by him of the first respondent's title was bona fide. In view of these findings he dismissed the suit.

On appeal the Civil Judge held that the will in favour of the first respondent was a genuine and valid will. Differing again from the Marshall he also held that the appellant had forfeited his tenancy rights by denying the title of the first respondent as the true wife. He, therefore, allowed the appeal of the first respondent and decreed in suit for possession of the house.

Feeling aggrieved with the judgment and decree of the Civil Judge the appellant preferred a second appeal in this Court. The appeal was heard by CHARTWELL, J., before him the appellant did not challenge the correctness of the finding of the Civil Judge that the will in favour of the first respondent was a genuine and valid will. Second finding of the Civil Judge that the appellant has forfeited his tenancy rights was, however, vehemently assailed. Two arguments were advanced on his behalf. Firstly, it was argued that the denial by the

grant of the title of an assignee or an heir of the former landlord did not create inheritance of tenancy rights under section 111(2) of the Transfer of Property Act hereinafter called the Act. Secondly, it was argued that taking all the circumstances and facts into consideration the correctness of the judgment in the tenancy suit must filed in the next suit, could not be supported as denying the title of the first respondent to the lease. Both the arguments were found to be untenable in the learned Judge, and he arrived at the conclusion that the appellants had forfeited his tenancy rights by denying the title of the first respondent in his counter statement in the next suit. He was also of the view that his decree was not *bona fide*. Accordingly, he dismissed the appeal, but granted leave to appeal to a Division Bench. The present appeal has been preferred in pursuance of the leave granted by the learned Judge.

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The judgment under appeal is reported in *Ram Das v. Sri Ram Lakshman Janki* (1).

Learned counsel for the appellants has urged before us that clause (2) of section 111 of the Act does not apply to a case where, as here, the lease admits the title of the lessor and denies only the title of his lessor's transferee to the demised property. Drawing our attention to the material words of that clause, which are—

"In case the lease mentioned has character as such by giving up a title to a third person or by claiming title to himself"

he submitted that there was no express or implied reference in these words to the transferee of the lessor. In support of his argument he also relied upon a decision of the Calcutta High Court in *Indulal v. Wahan and Wahan* (2).

(1) A.I.R. 1958 287 (2).

(2) 45 A.I.R. 191 (Cal. 1957).



right to determine the lease when the lease from his predecessor as interest owner (alliance) of his company rights during his ownership of the leased property, for after all, the source of entire right of his is to be found in section 110, which provides that all rights of the lease shall pass to him on transfer of the leased property. Section 111 indicates the various circumstances in which a lease is determined, one of them is by forfeiture. The section is worded in a general language which is apt to extend to the lease as well as his company lease, and there appears to be no sensible reason why the extensive scope of the section should be cut down and limited to the lease only. For instance, it stands to reason that the lease should stand determined not only when the interest of the lease and the lease in the whole property become vested at the same time in the lease, but also when the interest of the lease and the transferor of the lease in the whole of the property become vested in the lease. [For clause (d) of section 111]. The same will be the case with respect to other clauses of section 111. We, therefore, reject the arguments of learned counsel for the appellants.

The view that we are taking is supported by several authorities (*James and Wyle v. Mills* (3), *Dor & Bennett v. Long* (2), *C. Pankajachari v. C. Ranganatha Srinagar* (3), *C. Rama Srinagar v. Anga Gurusami Chetti* (4).

*Abdulla's case* (5), no doubt, goes the whole length with the arguments of learned counsel for the appellants. The learned Judges said there—

"There cannot be any doubt whatever that the denial of the right of an assignor from the original lease by the tenant does not work a forfeiture of

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(1) 1912 20 B.L. 444.

(2) 17 B.L. 1047.

(3) A.I.R. 1936 Mad 541.

(4) A.I.R. 1937 Mad 507.

(5) A.I.R. 1937 Cal 209.

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the treasury. This principle has been long settled and this cannot be and is not disputed at the bar.

It may be observed that there is no discussion and no reasons are given for the view. The learned judges have assumed that the principle has long been settled. It may also be noticed that the rule, as stated by learned judges, was conceded at the bar to be correct. With respect to the learned judges we are unable to agree with them.

The next argument of learned counsel for the appellant—and it is the crucial argument—is that having regard to all the circumstances of the case the appellant can not be held to have forfeited his treasury rights. The respondent's case of forfeiture of treasury rights is solely founded on the appellant's written statement in the respondent's earlier suit, suit no. 181 of 1946. The written statement was filed on February 11, 1947, and is Exhibit 2.

The question of forfeiture of treasury is often beset with difficulty. There is a plethora of cases, both Indian and foreign, on the point, but a search for an exactly applicable authority would often go unrewarded. It is, therefore, necessary to be clear about the principles that surround and govern forfeiture of treasury rights. Firstly, the denial of the landlord's title must be unequivocal, and absolutely definite, for the law strongly leans against forfeiture. (See *Shriee Babur Lal Gaur v. Munee Singh* [1].) Secondly, when the landlord's title is denied in writing, the writing should be construed as a whole, without giving undue emphasis to one or the other part of it. The writing should be examined with a view to ascertain whether the writer really intended to renounce his claim as owner by setting up a title to the disputed property in himself or in a third party. When the writing consists of a written statement,



we should not overlook the fact that plantings in India are often marked by productivity and flowers, and in later pressing plantings due allowance should be made for these distinctive defects. Therefore, the cases of pressing in-fact of insects, rights lies on the landlord plant off. He must unambiguously prove that the leasee has done and unequivocally repudiated his title to the demised property and has thereby lost his tenancy rights. If at the end of the day the court is left in doubt as to it takes the view that the writing, which is alleged to repudiate the title of the landlord, is equivocal, he repudiates. Lastly, it is now well settled that the leasee may in good faith and for his own protection pay the rent of his lease so taking proof of his title to the demised property before making payment to him. He has not entered into any agreement directly with him. If there are several claimants to a demised property, he must be sure who is the rightful owner thereof before he is entitled with the landlord of paying rent to any one of them. In *Monsieur v. Collier* (1), ERIC, J., said

"A tenant is liable to the person who has the real title, and may be forced to pay to him, either in an action for rent and occupation, if there has been a lease demise or an arrangement equivalent to one, or in trespass for the wrong profits. It would be unjust, if being so liable, he could not show that as a defence."

In *Jones's case* (2), it has been held that a tenant could refuse payment of rent to the auctioneer-in-law of his lease until the leasee proved his title to the demised property. The same principle is deducible from *Rea v. Cooper* (3). In *Santhi Lal Datta v. Mahesh Lal Chakrabarty* (4), it was held that if the leasee was ignorant of the title of the demised property by his leasee and had

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(1) 11 M. A. C. 100.  
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no belief in it, he could put the transferee in the proof of his title by purchase. This view was affirmed in *M Matheson v. Jado Matho* (1). In *Mahamud Ali v. Mohamed Abu* (2), it was said that, where a tenant created lease *in* the title of the transferee as the demanded property on the ground of seeking information of his title or having such title established in a court of law in order to protect himself, he did not forfeit his tenancy rights. It was further said that where the tenant in good faith disclaimed the transferee's title not with a view to protect his own interest but with a view to bolster up the claim of a third person to the demanded property, he would incur forfeiture of his tenancy rights. In *Parabattachari's case* (3), *Sankaraj Ayangar* [4], after referring to several decided cases, formulated his own view thus:

"If a tenant honestly disavows and not pretending to identify himself with a third party who sets up a title in himself against the real landlord, merely puts his alleged dispositive landlord to the proof of the latter's title before the tenant could recognize him as such, such conduct may not work a forfeiture of the tenancy and may not constitute such a disclaimer of the title of the landlord as would work a forfeiture."

It was found by the learned judge in this case that the tenant's denial of the transferee's title to the demanded property was deliberate and malicious in that their only object was to support a rival claimant to the property. It is not necessary to deal in detail with other cases on the point. [See *Matheson v. Jado Matho* (1), and *Rukmani Bai v. Rupa Bai* (5)].

(1) 12 C.N.V. 49.

(2) A.L.J. 1951 Cal. 301.

(3) A.L.J. 1951 Mad. 360.

(4) 12 C.N.V. 300.

(5) 11 B. 1954 Bom. 324.

In the light of principles elucidated above, we shall now examine the written statement of the appellant in suit no. 130 of 1946. It may be recalled that the respondent had submitted that suit is the court of the Judge of Small Causes in Kampan for recovery of arrears of rent from the appellant. In that suit the appellant had filed the said written statement. In the first part of the written statement the appellant has made a general denial of the allegations contained in the plaint of this suit. The second part of the written statement consists of additional pleadings. In the second part he has taken some specific plea. The second part consists of paragraphs 3 to 12. In paragraph 3 he has alleged that he is not the lessee of the plaintiff respondents and that there was no agreement of lease between them. We think that this is bare statement of a mere fact. It cannot be disputed that there was no direct agreement of lease between the appellant and the plaintiff respondents. Thus in paragraph 5 he has alleged that he took the house on rent from Sriman Janki Kaur, who expired in June 1946. That is also bare statement of a mere fact. Indeed it shows that he was admitting the title of his original lessor Sriman Janki Kaur. In paragraph 7 he has alleged that after the death of Sriman Janki Kaur, one Sriman Vidya Wari, who was setting up herself as a daughter of the deceased Sriman Janki Kaur, has taken possession over the house. It may be observed that in this paragraph the appellant has not set up a title in Sriman Vidya Wari as the deputed property. He has not said that she was the owner of the house. All that he has said is that she was setting up herself as a daughter of the deceased Sriman Janki Kaur. In other words he has said that she was claiming the house as the daughter of the deceased Sriman Janki Kaur. In the light of the principles stated above, we have no doubt in our mind that he could not be justified for making this statement in his written statement. The

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bad faith. We have seen the plan of the first respondent in the apartment unit; we do not find any allegation in that plan to the effect that the appellant had made agreements in his written statement in the rent roll as bad faith. Consequently there was no specific counter-allegation in the written statement of the appellant in the apartment unit that his statements in the written statement in the rent roll were made in good faith. No issue was framed in the trial court on the question of good or bad faith. Therefore, if there is any evidence on record to prove bad faith of the appellant (which we have already stated) has not at all been shown in it, that evidence cannot be taken in the court. (See *Dr. Pradip Kumar Das v. State of Mysore* (1). We are, therefore, not bound by the finding of the first appellate court that the appellant did not bona fide make the allegations in his written statement in the rent roll.

To sum up, a reading of the appellant's written statement in the rent roll as a whole, after giving due effect to its important factual details, gives us an impression that the appellant was not really denying the title of the first respondent to the house but was putting it to proof of its title to the house. As any man, we cannot say with certainty that he was unambiguously repudiating the first respondent's title to the house and not trying to put it to the proof of its title to the house. In *Waboch & Mary Parish Council v. Lilley* (2) one Mr. Douger was the owner of a cottage belonging to Waboch & Mary Parish Council. He had lived in the cottage for about 40 years and had paid rent up to October 1913 at the rate of 18s yearly. Thereafter he suffered from protracted illness and became impotent. It appears that he then purported to transfer the cottage to one Mr. Lilley and with that view he entered into an agreement for the sale of the cottage with him. One of the clauses in the agreement was that the

(1) 1981 1 (2) 205, 206.

(2) 1980 1 A 111 B. 201.



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to page 104 of the Report See RAYMOND EVERTS' note on 10-107.

"... [I]f we are just agreed with the Judge that in the end of all, when reliance is placed on a disclosure, it is a question of fact how the properly interpreted, the translation ought to be treated as having gone. For interrogatively, in the language of counsel's own formulation. Can it be said, here that the French Council proved (and clearly proved) because they are the plaintiffs, and the ones let Mr. Lilly was proceeding with the intention of enabling Mr. Lilly to set up an adverse tale."

He concurred with the view of the Judge that the denial by the tenant of his landlord's title must be a clear denial and must be clearly proved.

We have quoted somewhat extensively from the remarks of Sir Raymond Eversham to show how cases of the tenant before us often turn upon a strict interpretation of the wording of the tenant (alleging so clearly a disclaimer of the landlord's title) and on areas of proof. We think that the remarks of Sir Raymond Eversham furnish considerable guidance on the question before us, and examining the appellant's various statements in the rent act in the light of these remarks, we do not feel satisfied, as already noted, that the appellant had unambiguously repudiated the first respondent's title to the house. In our opinion, his various statement is more susceptible of the construction that he was putting the first respondent to the proof of his title to the house. On that view we would hold that the first respondent has failed to discharge the onus of proving that the various statements of the appellant in the rent act, amounts

ignores declared the ETC respondents. This is the  
 type of and then his interest as a tenant, therefore, come to  
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We accordingly hold that the appellants, has no in-  
 terest in country rights and is not liable to be ejected  
 from the house.

*Appeal allowed*

## APPELLATE CIVIL

THE  
CIVIL*Before Mr Justice Mustrip and Mr Justice Lal*

VINHMARAI SHARMA &amp; (APPELLANT)

v

SUKH SACHARAI COMPANY (PRIVATE) LIMITED  
(IN LIQ.) AND OTHERS (RESPONDENTS)**Winding up of a company—Liability of delinquent directors.  
Contributions for proceedings against, *Contribution Act*—  
Liability as legal representatives of delinquent directors—  
Indian Companies Act, 1913 ss. 159(1) and (2), 159(3)**

The period of three years from the first appointment of a liquidator in the winding up of an application by the liquidator for recovery or collecting the liability of a director or any other officer of the company for mismanagement etc. of any nature, or property of the company is to be computed not from the date of the appointment of the provisional liquidator under s. 170(1) of the Act but the appointment of the liquidator under s. 171(4) following or simultaneously with the order of the winding up.

The liability deemed being serious in question, a contribution against the heirs or legal representatives of the delinquent director or officers.

Special Appeal no. 147 of 1981, concerned with special appeal no. 22 of 1981 from a decision of *Wintrop J.* dated 21st October 1980 in Company Application no 56 of 1981 in Company Case no 7 of 1981.

The case has discussed.

Gyanendra Kumar, for the appellants.

A. Bhatia, for the respondents.

The judgment of the Court was delivered by—

**Wintrop, J.**—Special Appeal no. 147 of 1981 is by Vinhmarai Pal Sharma against Sukh Sacharai Company (Private) Limited (in liquidation) and others. Special Appeal no. 22 of 1981 is by Smt. Subhadra Devi Sharma and her two sons, Arong Pal Sharma and Ravi Pal Sharma against the official liquidator Sukh Sacharai.



Company Ltd (in liquidation) and two others, namely, Yashrao Pal Sharma and Bhagendra Pal Sharma. Special Appeal no. 24 of 1940 is by Bhagendra Pal Sharma against Seth Sancharak Co (Private) Ltd (in liquidation) and Yashrao Pal Sharma, Son, Subhashrao Deva, Arang Pal Sharma and Kera Pal Sharma.

NOT  
APPEALS  
SHARMA  
Seth  
Sancharak  
Company (P)  
Ltd.  
History I

The Honourable appeals arise out of the liquidation proceedings that commenced in respect of the private limited company known as the Seth Sancharak Company (Private) Ltd. The various appellants in the above Honourable appeals were members of a single family, for the company was a private limited liability company.

The company had in all 5,000 shares and these 5,000 shares were taken by the three brothers Yashrao Pal Sharma, Shakti Pal Sharma and Bhagendra Pal Sharma. It appears that the relations between the brothers were anything but cordial with the result that disputes arose between them. As a result of the disputes, on the 9th May, 1941, Bhagendra Pal Sharma filed an application for the winding up of the private limited company bearing the name of Seth Sancharak Co (Private) Ltd. On the filing of the application it appears a power for the appointment of an official liquidator was made. On the 16th May, 1941, Sri L. B. Saxena was appointed provisional liquidator.

The actual winding up order was made on the 14th May, 1941 and the provisional liquidator was appointed official liquidator by an order, dated the 17th May, 1941 the official liquidator happened to be also Sri L. B. Saxena, so that for the purposes of this case the provisional liquidator became the official liquidator in the case.

An appeal was preferred against the winding up order and there was an application which, in effect,

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prepared for the sake of the winding up order and the functioning of the official liquidator, as such. His evidence, dated 2nd June 2007, the operation of the winding up order was stated, though it does not appear clear as to whether or not any specific order as regards to staying the activities of the official liquidator was made.

The appeal was dismissed on the 4th September, 1915, with the result that the interim jury order, whatever its scope and ambit was, ceased to operate and the appointment of the official liquidator came to have full legal effect.

On the 17th December, 1954, the official liquidator received an application under section 214 of the Companies Act, 1948, against Vishnu Pal Sharma, Brijendra Pal Sharma and Shashi Pal Sharma's wife Smt. Subhadra Devi and her two sons. The application, the official liquidator made on the basis of an audit report, which had been made on the 16th November, 1954. The audit report appears to have come into existence as a consequence of an order by the learned Company Judge for the auditing of the accounts. Under the audit report the liability of the persons mentioned hereunder appears to have been ascertained: Vishnu Pal Sharma was shown as liable for a sum of Rs.32,524-5-6, while Shashi Pal Sharma's widow and sons were found liable for Rs.42,515-9-11 and Brijendra Pal Sharma for Rs.46,795-5-6. The question of liability appears to have come up before the learned Company Judge and all we need say in respect of that is that the liability in respect of Shashi Pal Sharma's branch was reduced from Rs.32,515-9-11 to Rs.42,524-5-6. This reduction in the liability was made on the ground of an arithmetical mistake then or any other ground.

The three appeals, which we have before us, are consistent with the findings aforementioned determined as the first instance by the learned and themselves affirmed by the learned Company Judge.

In regard to the nature of the liability, as one there was liability, there was no argument made except on behalf of Vidya Pal Sharma on whose behalf it was contended that the liability had been wrongly determined because there had not been a proper adjustment of accounts and proper entries had not been given as to the money to which he was entitled. We may, before turning to other questions, dispose of this contention of Vidya Pal Sharma by simply stating that learned counsel appearing for him was unable to place before us any material on which the contention of Vidya Pal Sharma that he was entitled to Rs 100 as salary and 24 per cent of the profits as commission could be legitimately held to be valid. The learned Single Judge found that there was no evidence on the record to show that Vidya Pal Sharma did not get the salary to which he was entitled or that he did not get any commission to which he was entitled, with the result that the claim of Vidya Pal Sharma in regard to these two matters was rejected by the learned Company Judge, and we have seen no reason on the materials on record to take a view different from that taken by the learned Company Judge.

Vidya Pal Sharma and Karpada Pal Sharma made their submission on the appeal on the question of limitation, although the question of limitation was also raised by Mrs. Subhadra Devi and her own case in Appeal no 22 of 1966, but in her case she had other shots in her locker to attack the judgment of the learned Company Judge with

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THE  
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The question of limitation that arose was this—

Under section 253 of the Indian Companies (1913) Act proceedings against a person—past or present Director, Manager or Liquidator or an officer of the company, could be taken for misapplication, retention or any misfeasance in breach of trust, “within three years from the date of the first appointment of a liquidator in the winding up.” It was conceded, we may mention here, that it is only this part of the section which applied for computing time for the purpose of limitation.

As we pointed out, there were, in effect, two orders which could relate to the two appointments of a liquidator one, by which a provisional liquidator was appointed, namely, the order of 16th Mar. 1949 while there was the other order which related to the appointment of the official liquidator, namely, the order of 27th May, 1952. The question that falls for determination is whether the period of three years mentioned in section 253(1) would start from the 16th Mar. 1949, or the 27th Mar. 1952, in the latter case. The material words of the section are “the first appointment of a liquidator in the winding up.” As we pointed out, the order of winding up in this case was made on the 16th Mar. 1949 and the official liquidator was appointed by an order of the 27th May, 1952. The order by which a provisional liquidator was appointed was, as we pointed out, made on the 16th Mar. 1949.

Section 174(1) says that—

“For the purpose of conducting the proceedings in winding up a company, and performing such duties in reference thereto as the court may impose, the court may appoint a person or persons other than the official receiver to be called ‘an official liquidator or official liquidators.’”

This provision of sub-section (1) quoted above appears to be of general import. Sub-section (2) of the section, however, is not of such general import for the subsection is in these words:

"The court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up, but shall, before making any such appointment, give notice to the company, unless for reasons to be recorded it thinks fit to dispense with notice."

This subsection indicates that a provisional liquidator can come into being after the presentation of a petition but before the making of an order of winding up. From this it appears that a liquidator who is appointed after the making of the order of winding up is the liquidator in winding up. Mr. Gwynedre Eames on behalf of his client contended that by virtue of s. 268 the winding up of a company would be deemed to relate back to the date of the presentation of the petition. We have no quarrel with this proposition of Mr. Gwynedre Eames; we are not concerned with determining the point of time from which the winding up is to be deemed to commence, we are concerned with knowing when a liquidator "in the winding up" comes into existence. In our judgment, the words "in the winding up" in section 258(1) must relate to a point of time subsequent to the making of the order of winding up, although it may be that the appointment order is contained in the same order by which winding up is made. The first appointment of a liquidator referred to in section 258(1) cannot, in our judgment, refer to the appointment of the provisional liquidator made under sub-section (2) of section 125. Apart from the reasons which we have indicated above, there are other good reasons for coming to this conclusion.

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We want to hold that the first appointment referred to in section 371(1) could refer to the appointment of a professional liquidator then we would be faced with the difficulty that although the professional liquidator could not prior into the financial position of the company, to see whether there was undistributable funds of trust, etc. and see business for making such notice would commence to run, and it may be that in certain cases, liquidation would have run out before the professional liquidator gave room to the official liquidator and before a proper view of the state of affairs of the company could be made. This could never have been intended.

In our opinion there should be further support for the view which we have taken from the provisions of articles 177-8. The argument which the official liquidator was entitled to make under that section could be polished a winding up order had been made. For reasons given earlier we have not the slightest hesitation in holding that the period of three years mentioned in section 224(1) of the Indian Companies (1906) Act commences from the date when the official liquidator is first appointed, after the winding up order has been made. The learned Single Judge took the same view and we are of opinion that he was right. Therefore the portion which the official liquidator made under section 245 was within time.

As we pointed out in respect of Appends no. 167 of 1950 and 25 of 1948, no other point needed discussion (or except the small point raised by Yehuda Peli Shazari about which we have already discussed off earlier).

Coming now to Special Appeal no. EE of 1968 filed by Srta. Subhadeb Devi and her relatives, the Hon. JUDGE says that we need not first, as the two contestants in regard to kinship must fail on the same ground on which it failed as regard to the other two aspects.

In this appeal the substantial question that the appellants raised was as to their liability to be proceeded against for misappropriation, retaining or misfeasance, etc., as provided for under section 294(1). Against Smt. Subhadra Devi, the contention that was raised was that she was liable for the sum of money which her late husband Master Pal Sharma had taken away from the company, in the capacity of a Director—sums to which he was not legally entitled. As against Smt. Subhadra Devi there was further the case that she in her personal capacity had made certain withdrawals for which she was accountable. The question that arises in the factbook on the second part of the case, which was put forward by the official liquidator against Smt. Subhadra Devi and her sons, was what was the capacity in which she purported to take away the moneys. It was contended by the liquidator that she purported to take away the money as a Director, indeed, her case was first she was a Director. The finding of the learned Company Judge is that Smt. Subhadra Devi was not a Director, for she had never been elected as such. Further, there is nothing in the decision of the learned Single Judge or in the record to which our attention could be drawn on which it can be said that when Smt. Subhadra Devi took any of the sums of money for which she is being made liable, she acted as a Director or as any of the persons mentioned in s. 294(1) who could be proceeded against under that section. It appears that the company which was a private company was looked upon as a family affair, and that Smt. Subhadra Devi may have in the capacity of a member of the family, as a widow of the deceased brother, who contributed to raising one-third of the moneys, took over certain sums of money. Smt. Subhadra Devi may have acted illegally or without any justification, but that

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alone did not confer jurisdiction on the official liquidator to proceed against her under the provisions of section 224(1).

Smt. Subhadra Devi and her sons could not possibly be made responsible for monies, which had been wrongfully taken by her husband, for s. 224 does not impose within its ambit the heirs or the legal representatives of the person mortgaged in that section who could be proceeded against under that section. The liability which is conferred under section 224 is a liability on the nature of a tort, or a quasi criminal responsibility, and it is a well known proposition of law that no one could be held vicariously responsible for the tort of another unless that other had specifically authorised the tort nor can there be vicarious responsibility for a crime or a quasi crime. In our opinion, therefore, neither Smt. Subhadra Devi nor her sons could be made responsible for proceedings under section 224(1), for any thing which her husband did as a Director or in any other capacity for which he could be held responsible under section 224, nor could Smt. Subhadra Devi be held responsible for any monies which she took away herself or through her sons in those proceedings.

The question whether Smt. Subhadra Devi could be liable as a contributory is another question. Our attention has not been drawn to any list of contributories which might have been drawn up. Therefore, we cannot say whether Smt. Subhadra Devi could be or not on any such list. This decision of ours will therefore not affect any right that the official liquidator may have to proceed against Smt. Subhadra Devi and her sons as a contributory, but she and her sons cannot be proceeded against under section 224(1), under which they had been proceeded against and out of which the present appeal has arisen.



In the result, we must allow Appeal no. 22 of 1962, and we do so. Sir Nicholas Storr and his sons will be repaid, at their costs of the appeal.

Special Appeals no. 187 of 1979 and 25 of 1980 will, for the reasons given above, be dismissed, and these appeals are hereby dismissed. The official languages shall have been costs from the appellants of these two appeals.

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## APPELLATE CRIMINAL

*Justice M. Justice Das and Mr. Justice Gupta*

BYCHHARA SINGH

STATE OF UTTAR PRADESH

*Confession in the course of investigation*—*Amount of*, by *Wage* *late of the appeal* *also* *an* *applies* *applied* *in* *the* *light* *of* *the* *State* *Constitution*—*Whether* *admissibility* *is* *affected*—*Code of Criminal Procedure*, 1898 *in* 364 (30, 312 and 313)—*Section* *161* *of* 1898, *s. 20*

*Procedure*—*Judgment of Privy Council*—*Reading* *into* *it*, *as* *High Court*—*Construction of* *Rule* 186B, *of* 1957

The accused, who, in a police lock-up, on charge of an offence, Public Prosecutor and guarded by police from some other were alleged to have made a confession which was read out by a Magistrate purporting to act under s. 161 of the Code of Criminal Procedure, of the original case without being specially empowered to do so, held by the High Court—

That, then s. 161 of the Code of Criminal Procedure did not empower such a Magistrate to record the confession and the result was, therefore, inadmissible in evidence. The dates being one of reference and not receipt of time and place in the 161 of provision was not available under s. 161 as all of the Code. The accused being, for all practical purposes, in police custody the confession could not be proved or received as evidence in such a police confession could be an offence, proving. The evidence could not be admissible under s. 20 of the Evidence Act since since the latter part of that section simply requires the law officer, the administration of confession during police custody but it does not follow it is to be received when it is provided for and governed by s. 161 of the Code. Prescribing on the contrary of the principle laid down under s. 161 of the Code the whole proceeding before the Magistrate in this case would be void.

*State of* *Uttar Pradesh* *vs.* *Bychhara Singh* *applied*

*Police*, *Section* *22* *of* *the* *Constitution* *provides* *that* *the* *law* *administered* *in* *every* *High Court* *shall* *be* *the* *same* *as* *administered* *in* *the* *appropriate* *territory* *shall* *be* *the* *same* *as* *administered* *in* *the* *territory* *of* *the* *Constitution*. The law, laid down by the Judicial Committee of the Privy Council should not be in conflict with any ruling of the Supreme Court would, therefore, be binding on the High Courts in India.

*14* *AIR*, 1957 *PC*, 202

Against Sps. 8 no. 277 of 1942—pleaded with Pleasured Sps. 8 no. 1489 of 1942 and Government Appeal no. 257 of 1942) from an order of 1—of Sd/- Additional Sessions Judge of Allahabad, dated the 11th October, 1942.

THE  
MEMORIALS  
SUBMITTED  
BY  
THE  
Sd/- JUDGE  
OF  
ALLAHABAD  
FOR  
THE  
GOVERNMENT

The facts appear in the judgment.

P. C. Chatterjee, for the appellant

Government Advocate for the respondents

The judgment of the Court was delivered by—

ONE. 1.—These three connected appeals relate to the murder of one Raja Ram Singh. Singh has been convicted by the learned Additional Sessions Judge Allahabad under sections 302, I.P.C. for Singh and Toga Singh have been convicted under sections 302, I.P.C. read with sections 109-B, 109 and 114, I.P.C. Singh, Singh and for Singh have been sentenced to death while Toga Singh has been sentenced to imprisonment for life.

According to the prosecution, Raja Ram, deceased was a householder of Alidighi in Allahabad. He had a shop on the main market of Alidighi. For a long time Abdul Rashid accused had rivalry with Raja Ram. Famer and Khalid accused are related to Abdul Rashid accused. These men decided to get Raja Ram murdered. The case was carried out in the streets of Jala Billa for murdering Raja Ram. The four Billa are Kamla Singh, Singham Singh, for Singh and Toga Singh. The seven men entered into a criminal conspiracy to murder Raja Ram.

One evening Raja Ram was doing at his shop. The four Billa accused entered the shop at about 7.15 p.m. These accused stood near the shop, while the fourth accused stood at a short distance from the shop. The three Billa accused made some purchases from Raja Ram deceased. One of the Billa asked Raja Ram to supply certain other things. Raja Ram replied that

THE  
PUNJ  
LAW  
REPORTS  
—  
Vol. 7

he would attend to him after the price for things already purchased had been paid up by his companions. On receiving this reply, the accused who had purchased certain articles retorted that he would settle his account afterwards. So saying, that accused pulled out his pistol and fired towards Raja Ram. The pistol, however, misfired. Another accused received a signal from his companions. That accused also pulled out his pistol, and fired at Raja Ram. That accused was Singhar Singh. Raja Ram was hit in the neck, collapsed, and died instantaneously. Some neighbours heard the report of the fire, and one the fifth accused (coming near) from Raja Ram's shop. These people chased the four fifth accused for some distance. But another fire was made by the assassins. In the chase had to be abandoned. One Chandya Prakash handed over a written report to police station. Although the same evening.

Abdul Rashid, Zamir and Khali accused absconded. They could not be arrested till several months had elapsed after Raja Ram's murder. The four fifth accused were arrested upon suspicion. They were put up for identification in jail. There accused, Singhar Singh, Bis Singh and Tapa Singh made confession before a Magistrate admitting having participated in Raja Ram's murder. The seven accused were committed to sessions for criminal conspiracy and murder.

All the seven accused pleaded not guilty. Abdul Rashid accused denied that he had events with Raja Ram deceased. The fifth accused said that they were shown to witnesses before the identification parade. Singhar Singh, Bis Singh and Tapa Singh denied having made confession before a Magistrate.

The learned Additional Sessions Judge held that no offence had been established against four accused, Abdul Rashid, Zamir, Khali and Singhar Singh.

These four accused were, therefore, acquitted. It was held that the charge of murder was proved against three accused, Singhara Singh, Bir Singh and Tapa Singh. It was found that Singhara Singh was personally responsible for Raja Ram's murder. These three accused were, therefore, convicted and sentenced as mentioned above.

Criminal Appeal no. 2017 of 1949 has been filed by Singhara Singh and Bir Singh. Criminal Appeal no. 2149 of 1949 has been filed by Tapa Singh. Government Appeal no. 287 of 1949 is directed against the acquittal of Ramdas Singh, Abdul Rashid, Zameer and Khaliq. The learned Sessions Judge has referred the case to this Court for confirmation of death sentences awarded to Singhara Singh and Bir Singh.

Raja Ram was murdered in Alnagarh Town at about 7.40 p.m. on 20th March 1939. Chandra Prakash lodged the first information report (R. No. 14) the same evening at 8 p.m. The report was made promptly. It was noted in the report that names of the culprits were not known. But they could be identified. The report made mention about enmity between Raja Ram and Rashid accused. The prosecution has produced a number of residents of Alnagarh, who were present near the scene of murder. There is ample evidence to prove that Raja Ram was murdered in his shop at about 7.40 p.m. on 20th March 1939.

Post-mortem examination was held next day. The deceased had several gunshot wounds. Death was due to shock and haemorrhage resulting from gunshot wounds on the lower jaw.

According to the prosecution, enmity between Abdul Rashid accused and Raja Ram deceased was the motive for murder. Chandra Prakash (P. W. 3) stated about enmity between Raja Ram deceased and Abdul Rashid accused. Two months before Raja Ram's murder

THE  
ALLAHABAD  
NEWS  
P. W. 3  
CHANDRA  
PRAKASH  
DEED, 1

Q. 10  
 Answer  
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 Q. 11  
 Answer  
 Yes  
 Q. 12

there was a quarrel between Abdul Rashid and Raja Ram over Ram Leela ground. Abdul Rashid had fixed some pegs on this land. Raja Ram objected, and forbade Abdul Rashid to fix pegs there on the ground that that land was meant for religious purposes. Raja Ram uprooted the pegs, which had been fixed there by Abdul Rashid's women. Nishi Kant (P. W. 7) also gave evidence on the question of enquiry. Initially, he described his residence as Dehri Duan. Then he said that he is a resident of Aligarh Town. He mentioned several quarrels between Raja Ram and Abdul Rashid. The witness was cross-examined by the defence at some length. At this stage, the State Counsel requested for permission to put some more questions by way of supplementary examination which in this supplementary examination in chief Nishi Kant asked them, one month before Raja Ram's murder. Border Mahendra Singh had told Raja Ram about Rashid's offer to Mahendra Singh for murdering Raja Ram for a reward of Rs 500. This point was mentioned by Nishi Kant witness to the C.I.D. Inspector for the first time. The C.I.D. Inspector did not take up investigation until 26 May 1979. It means that Nishi Kant was silent over this matter for more than one month after Raja Ram's murder. There was a dispute between Nishi Kant witness and Rashid around about a certain Basahat. Nishi Kant cannot, therefore, be said to be an independent witness. As observed by the learned Sessions Judge, Nishi Kant seems to be interested. He claims to be present whenever Raja Ram and Abdul Rashid happened in quarrel. Nishi Kant's evidence is not reliable.

Sri Badhey Lal (P. W. 18), was Chairman, Town Area Committee, Aligarh. He is a former President of Aligarh Congress Committee. He said that one and a half months before Raja Ram's murder, the witness



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P.  
P.W. 34  
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P.W. 35  
Q. 1.

Mahendra Singh (P.W. 33) was produced in order to show that Abdul Rashid accused was making plans to get Raja Ram murdered. Mahendra Singh deposed that Rashid accused proposed to him that the witness should murder Raja Ram for a reward of Rs. 500. The witness said that he was on intimate terms with Rashid accused. The witness went on to state that, he passed on the information to Raja Ram deceased. Mahendra Singh said that he had great friendship with Rashid accused. The witness had just an acquaintance with Raja Ram. In view of the relations of the witness with the parties, there was no good reason why the witness should have disclosed to Raja Ram the proposal made to the witness by his friend Abdul Rashid. Mahendra Singh said that he had never murdered anyone. Nor did he ever attempt to kill any one. He never carried any one with a sword, spear or bow. He is not a man of bad character. It is not understood why Abdul Rashid should have looked to Mahendra Singh for murdering Raja Ram. The important information in Mahendra Singh's possession was not disclosed to the police for a long time after Raja Ram's murder. The witness was examined by the C. I. D. Inspector two months after the murder. Mahendra Singh's statements were rightly rejected by the learned Sessions Judge.

There is also evidence to the effect that there was a conspiracy among the seven accused a couple of hours before Raja Ram's murder. Uday Singh (P.W. 4) and Jagdish Prasad (P.W. 5) deposed that they met late in the night at Abdul Rashid's house. The two were wearing various Panis, Kurahs and Ghatala along with Abdul Rashid's hat. Four bottles raised the hat at about 11.30 p.m. The strangers were questioned by the Muslims accused in detail. The same evening at about 7.45 p.m. Raja Ram was murdered. The two witness



an old silver running away from Raja Ram's shop. In his examination-chief Udharaj Singh pointed out Karam Singh, Singhram Singh and Bir Singh accused. The witness said that he saw the three accused running away from Raja Ram's shop. The witness did not state that these very accused had been seen by the witness in the afternoon at Radha's hut. Udharaj Singh claims to have seen the swaggers at 3-30 p.m. But in his statement before the police the witness said that he saw the Sikhs at the hut at about 7 p.m. In the month of March it would be dark at 7 p.m.

One Bhajan Singh was suspected in connection with the present murder. He was put up for identification at Fardkot in East Punjab. Bhajan Singh was identified by as many as four witnesses as the fugitive that, he was one of the persons responsible for Raja Ram's murder. But Bhajan Singh was not presented to the police voluntarily. It is now said for the prosecution that, Bhajan Singh had nothing to do with Raja Ram's murder. Udharaj Singh witness identified Bhajan Singh as one of the culprits. Udharaj Singh claims to have noticed Sikhs at two stages at the hut at 3-30 p.m. and near Raja Ram's shop at 7-45 p.m. The witness did not mention to anybody that the Sikhs had been seen by him in Radha's company at his hut. Both these witnesses, Udharaj Singh and Jagdish Prasad employees of Ramraj Das Krishna Kumar. According to the statement of Chander Prakash (F. W. R.), there has been litigation between Krishna Kumar and Abdul Rahid since 1937. Krishna Kumar has filed a suit against Abdul Rahid accused for agitations from certain land. In view of the litigation between Krishna Kumar and Abdul Rahid accused, Udharaj Singh and Jagdish Prasad cannot be considered to be independent witnesses. The learned Sessions Judge was prepared to believe that, the two witnesses took

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part in choosing the culprits. But the learned Judge did not think that the two witnesses visited Raja Ram's shop. Jagga Singh (P. M. 5) is an entire stranger to Aladgarh. He said that at 2 or 3.30 p.m. Khaili accompanied visited his shop and obtained a bottle of liquor. Khaili accused said that Rashid and Zameer were conspiring certain guests. Later in the evening Raja Ram was murdered. There was a dispute between Jagga Singh witness and Rashid accused about certain fact Jagga Singh is not an independent witness. Secondly, Jagga Singh does not know the guests mentioned by Rashid and Zameer that evening. So Jagga Singh's statement is of little value. The mere fact that Rashid, Zameer and Khaili quarrelled some guests a couple of hours before Raja Ram's murder is hardly evidence about a criminal conspiracy. These witnesses do not claim to have heard any talk among them accused pointing out a criminal conspiracy for the commission of murder. The evidence of these four witnesses, Uday Singh, Jagga Singh, Jagdish Prasad and Mahendra Singh is not sufficient for establishing a criminal conspiracy.

The most important witness in the case is Kamari Usha (P. W. 3). She is the daughter of Raja Ram deceased. She was present at the shop, when her father was shot dead. She was, therefore, in a good position to identify the culprits. There was a gun in the shop. She said that one of the culprits carried a pistol. She, however, said that pistol is a weapon, with which a bullet is fired. Kamari Usha was in a good position to identify the culprits.

The prosecution examined six witnesses, who charged the offenders with their murder. The first witness of this group is Narendra Kumar (P. W. 2). He stated that he visited Raja Ram's shop for purchasing candles with. Harman Singh (P. W. 3) stated that at 10.30 p.m.



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appear before the police till he was examined by the C.I.D. Inspector. That was some six months after the murder. Jagan Singh's statement appears suspicious.

The four Sikh accused were put up for identification in jail. According to a note in Ex. Ka 26, Kandan Singh accused was admitted to jail on 25th September 1949. But Narain Singh head constable of M. P. 191 stated that, there is no entry of admission of Kandan Singh accused on 25th September 1949. He was, however, thought that this accused must have been admitted on some previous date. Kandan Singh accused was put up for identification on 22nd October 1949. That was seven months after Raja Ram's murder. Sir Singh accused was arrested on 16th October 1949. He was put up for identification on 11th November 1949. That was nearly eight months after Raja Ram's murder. Jagdish Singh was arrested on 14th October 1949. But he was not put up for identification until 2nd December 1949. That was 8½ months after Raja Ram's murder. Teja Singh was arrested on 15th October 1949. But he was not put up for identification until 2nd March, 1950. That was about a year after Raja Ram's murder. It will be noticed that Sir Singh, Jagdish Singh and Teja Singh had all been arrested before 15th October 1949. But none of them was put up for identification on 22nd October 1949, along with Kandan Singh. There is no satisfactory explanation for the delay in putting up Sir Singh, Jagdish Singh and Teja Singh for identification.

Ex. Ka 25 shows that the Magistrate, who conducted the identification test, noted as under in 17 distinctive marks on Kandan Singh's body. Clots of paper were pasted to cover up these distinctive marks. It was difficult to identify the accused with so many paper clots on his face. Ex. Ka 26 is the memorandum of the identification proceeding for Sir Singh accused. The



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Leah, an eighteen year old girl, was taken over by G.I.B. Inspector, Subhinder Singh (P. U. 38). He started investigating on 7th May 1959. In conversation, the Inspector stated that, names of Singham Singh, Kanda Singh, B. Singh and Toga Singh occurred came to light for the first time on 17th July 1959. It means that the police had nothing against these four till several days after 1 month after Raju Ram's murder. For the first time an action against them occurred between 10th July 1959 and 13th October 1959.

Each of the four Sikh accused was identified by a number of witnesses. Karam Singh was identified by 11 witnesses. Bir Singh was identified by four witnesses. Stephens Singh was identified by eight witnesses. Toga Singh was identified by three witnesses. However, the evidence of identification is open to several objections. The first accused was put up for identification more than seven months after the murder. As there is four witnesses claimed to have identified one Bhupen Singh as a culprit, although it is not said that Bhupen Singh was in any way connected with the murder. The culprits had their heads covered with women, while they were clearing them. In this position identification of faces was difficult. It is said that one of the three culprits who worked Ratu from a shop at the time of the murder, one had a hat on, while the other two were clean shaven. But it appears that at the time of the identification parade all the four accused had beards. That creates another difficulty in identification. A large number of photographs were posted on the barn of the accused at the time of the identification test. The arrangements for keeping underworld prisoners in the police lock up was unsatisfactory. In view of all these circumstances, one cannot place much reliance upon the evidence of identification. The learned Sessions Judge was right in holding that none

of the fact would also be corrected, except on the basis of the evidence of identification.

Ea. Ex. 14, Ex. 15 and Ex. 16 are confessions of Sanghara Singh. Ex. Singh and Tapa Singh accused (recorded in Tabular/Magistrate, Ex. Dist. (P. M. 10) Sanghara Singh accused was arrested on 14th October 1959. He was produced before Ex. Dist. on 15th October 1959. Sanghara Singh's confession was recorded on 16th October 1959. Tapa Singh accused was arrested on 15th October 1959. His confession was recorded on 16th October 1959. Ex. Singh accused was arrested on 16th October 1959. His confession was recorded on 17th October 1959. We are a little surprised that although the three accused were arrested several months after Raja Ram's murder, they made confessions before the Magistrate so soon after their arrest. Ex. Dist. made it clear that, he recorded the confessions in the judicial lock-up. Ordinarily, such confessions should be recorded by Magistrate in open court. The judicial lock-up at Ahmednagar is at a short distance from the police building. There was, therefore, no difficulty in recording the confessions in the Tahsildar's court-room. Karam Usha (P. M. 1) mentioned the visit of these Sanghara to her father's shop. The report (Ex. Ex. 10) also mentions the visit of three strangers to Raja Ram's shop. It is said that, one man had a pistol, the second had a talak, and the third man had a knife. Karam Usha mentions only one fire. The report also mentions one gunshot in Raja Ram's shop. But according to the three confessions, all the four Sikh accused visited Raja Ram's shop in the time of the murder. It is said that, Kandan Singh and Sanghara Singh accused carried one pistol each. At first Kandan Singh fired his pistol. But the weapon misfired. It was then that Sanghara Singh fired his pistol, and killed

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**Reply from:** There was no material difference between the version given by Karaman, Lohs and mentioned in the report (i.e. Ka-Hy on one side and the version to be found in the various confessions on the other side).

The main contention of Mr. P. C. Chatterjee appearing for the accused persons was that, the alleged confessions are not admissible as evidence. He pointed out that, Sri Dixit was only a second class Magistrate. He proposed to record the confessions under section 164, Criminal Procedure Code. Section 164 Criminal Procedure Code runs thus—

(4) Any Presidency Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the State Government may, . . . record any statement or confession made to him in the course of an investigation under this Chap-

3d. Black could record the conference under section 164, Criminal Procedure Code only if he was specially empowered by the State Government in that behalf. In his deposition, Sir Datta maintained that, he was so empowered. But he could not refer to the relevant Government notification. The District Government Counsel conceded before the trial court that, the prosecution was unable to prove that. Sir Datta was specially empowered by the State Government under section 164, Criminal Procedure Code. The learned Deputy Government Advocate also could not refer to any Government notification, in which Sir Datta was specially empowered. It is, therefore, clear that, Sir Datta was not specially empowered by the State Government, for recording confessions under section 164, Criminal Procedure Code during October, 1952.



Mr. P. C. Clabworth strongly relied upon *Smith against King Emperor* (1). In this case the prosecution sought to prove that the accused had made a confession before a few days' Magistrate, Mr. Yoshida. Mr. Yoshida did not record any confession, as laid down in section 184 Criminal Procedure Code. However, Mr. Yoshida appeared in the witness-box, in order to prove the alleged confession. He went on to state that some rough notes of the confession were prepared on the spot. The rough notes were subsequently destroyed. He, however, prepared a memorandum containing the substance but not all the matter to which the accused had referred. The sole question for our consideration before their Lordships was whether the evidence tendered by Mr. Yoshida on the question of the confession was admissible. After referring to the language of sections 184 and 186, Criminal Procedure Code their Lordships held that,—

"Where a power is given to do a certain thing in a certain way the thing must be done in that way, or not at all. Other methods of performance are necessarily forbidden."

Mr. Yoshida's evidence was, therefore, excluded.

In this case it was urged for the Crown that, although the confession could not be admitted under section 184, Criminal Procedure Code, Mr. Yoshida's oral statement was admissible, because it had nothing to do with section 184, Criminal Procedure Code. This contention was rejected by their Lordships. They observed on pages 217 and 228:

"On the matter of construction sections 184 and 186 must be looked at and construed together, and it would be an unusual construction to hold that 186's other procedure was permitted *tho* 184, which it laid down with such minute particularity, in the

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sealings themselves. Up to the construction adopted by the Crown the only effect of section 181 is to allow evidence to be put in a form to which it can prove itself under sections 74 and 80, Evidence Act. Their Lordships are satisfied that the scope and extent of the section is far other than this, and that it is a section conferring power on Magistrates and debarring them. It is also to be observed that if the construction contended for by the Crown be correct, all the provisions and safeguards laid down by sections 184 and 184 would be of such trifling value as to be almost idle. Any Magistrate or any man could dispose of a confession made by an accused so long as it was not induced by a threat or promise, without affirmatively satisfying himself that it was made voluntarily and without showing or leading to the accused any version of what he was supposed to have said or asking for the confession to be verified by any signature. The range of magisterial confessions would be so enlarged by this proviso that the provisions of section 181 would almost inevitably be totally disregarded in the same manner as they were disregarded in the present case. . . . In their Lordships' view it would be particularly unfortunate if Magistrates were asked to all generally to act rather as police officers, than as judicial persons, so be by reason of their position being from the disability that attaches to police officers under section 182 of the Code, and to be at the same time freed, notwithstanding their position as Magistrates, from any obligation to make records under section 184. In the result they would indeed be relegated to the position of ordinary clerks, or scribes, and there would be required to depend on matters connected with them in their official capacity, unregulated by any statutory rules

of procedure or method, whatever . . . the effect of the statute is clearly to prescribe the mode in which confessions are to be dealt with by Magistrates when made during an investigation, and to render inadmissible any attempt to deal with them in the method proposed in the present case."

The learned Deputy Commissioner Advocate relied on sections 183, Criminal Procedure Code. Section 253, Criminal Procedure Code states:

"(1) If any court, before which a confession or other statement of an accused person recorded or purporting to be recorded under section 164 or section 164A is introduced or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded, and, notwithstanding anything contained in the Indian Evidence Act, 1872, section 11, such statement shall be admitted if the error has not injured the accused as to his defence on the merits."

In *Empress v. Karmayya Bhatnagar* (1) it was pointed out at page 158 that, under section 183, Criminal Procedure Code a defect of form can be ignored, but not a defect of substance. In the present case we have seen that Sri Dixit was not competent to record any confession under section 164, Criminal Procedure Code. In other words he had no jurisdiction to act under that section. That is a matter of substance, and not merely one of form. Section 253 Criminal Procedure Code contemplates a case, where an accused person duly made a statement or a confession before a Magistrate. The word 'duly' means in accordance with law or as contemplated by law. If Sri Dixit was not competent

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in record a confession under section 161, Criminal Procedure Code, it cannot be said that an accused duly made a confession, before Sri Dhilli. Such a fact as this cannot be cured by section 171, Criminal Procedure Code.

A reference was also made to section 157, Criminal Procedure Code. That section lays down that, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed on appeal, or revision on account of certain irregularities. That section is applicable only in those cases, where the impugned order has been passed by a court of competent jurisdiction. If a court acts without jurisdiction, section 157, Criminal Procedure Code has no application. Section 159, Criminal Procedure Code lays down that, if any Magistrate, not being empowered by law, in that behalf, does certain things, his proceedings shall be void. It is true that confessions have not been expressly mentioned under section 159, Criminal Procedure Code. But if the principle of section 159 is applied, it would mean that the proceedings before Sri Dhilli were void.

The learned counsel for both the parties relied upon section 25, Indian Evidence Act. Section 25 Indian Evidence Act reads:

"No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person."

The impugned confessions were made before a Magistrate. It was, therefore, urged for the State that, the confessions are admissible as evidence under section 25, Indian Evidence Act.

In "*Nasir Munsabing v. Emperor*" (1) it was pointed out that, the words of section 25, Evidence Act, are

(1) 4 L.R. 127 Ind. 125.

last night, and there is nothing in that section that limits its operation to Magistrates specially empowered under section 164, Criminal Procedure Code. Section 26, Indian Evidence Act, lays down a rule that a confession made by any person while he is in the custody of a police officer shall be proved against such person. To this rule there is an exception. That exception is provided by the presence of a Magistrate. For purposes of section 26, Indian Evidence Act, any Magistrate is good enough. But that is not the position as regards section 164, Criminal Procedure Code. The latter part of section 26, Indian Evidence Act, merely explains how the bar created by the section may be got over. That section does not lay down how a Magistrate should record a confession. That point has been dealt with in section 164, Criminal Procedure Code.

The learned Deputy Commissioner Advocate outlined the difficulty of meeting the confessions as mentioned under section 164, Criminal Procedure Code, by a Magistrate. It was, therefore, suggested that the confessions may be treated as confessions recorded by an ordinary person. The place, where the accused of the present case were kept, has been described as a jail-cell lock-up. But for all practical purposes, those men were in the custody of police officers. So the situation mirrors the bar created by section 26, Indian Evidence Act. In order to get over that bar, the prosecution had to prove the presence of a Magistrate. In order to get over the prohibition contained in section 26, Indian Evidence Act, the prosecution had to urge that the first was a Magistrate. On the other hand, in order to get over the prohibition contained in section 164, Criminal Procedure Code, the prosecution suggested that the latter was to be treated as an ordinary person. Such a

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Section 164,  
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position is untenable. This was the view taken by the Kerala High Court in *Abdul Samad v. The State*. (1)

The learned Sessions Judge acknowledged that Sri Dixit was not competent to record confessions under section 161, Criminal Procedure Code. But the learned Judge expressed the view that, the confession in question may be treated as extra judicial confession. Now one cannot overlook the fact that Sri Dixit was a second class Magistrate. He claimed before the court that he recorded the confessions by virtue of his special powers under section 164, Criminal Procedure Code. The confessions of Singham Singh and Tej Singh referred make a pointed reference to section 164, Criminal Procedure Code. The confessions of the Singh accused has also been recorded in the same form. It is, therefore, obvious that, Sri Dixit purposed to record the confessions under section 164, Criminal Procedure Code in his capacity of a second class Magistrate. Under the circumstances, it is difficult to see how these confessions can be accepted as extra judicial confessions. We have already pointed out that, if Sri Dixit is treated as an ordinary person, the prosecution would have to face the difficulty created by section 26, Indian Evidence Act. We are, therefore, unable to treat these confessions as extra judicial confessions.

The learned Sessions Judge has relied on *Achari v. State* (2). In that case a Division Bench of this Court observed on page 139 that:

"Any person can conduct a test identification, but Magistrates are preferred. His identification means a record of the statement which the identifier expressly or impliedly made before him.

If the person holding the identification is a Magistrate of the first class, or one of the second class

specifically empowered, section 86A, Criminal Procedure Code applies, and his identification memo is admissible in evidence under section 80 of the Evidence Act without proof. But if other Magistrates or private persons hold it, they must be called as witnesses to prove their memo.

Then again:

Where the proceedings have been held before a Magistrate of a second class not specially empowered, or a Magistrate of a third class, the statement is not under the sanction of the law. There is a difference between the legal status of the two kinds of the statements. Nevertheless the statement irrespective of the position of the Magistrate before whom it is made, contains a formal statement of the accused, and can be used, not only for the purpose of corroborating him under sections 146 or 151 of the Evidence Act, but for corroborating him under section 137 of that Act. . . .

In *Ashraf's* case the learned Judges were dealing with the question of identification parades held by Magistrates. There was no occasion to discuss the question of confessions recorded before Magistrates.

The learned Deputy Government Advocate contended that, if the confessions advanced on behalf of the accused persons were to be accepted, the Magistrate would be placed in a position inferior to that of ordinary persons. Such situations are not unknown to law. According to section 75, Indian Evidence Act, no confession made to a police officer shall be proved as against the accused. According to that provision, an ordinary person would be in a better position than a Deputy-magistrate of Police. Public policy requires that inferior empowered Magistrates should not undertake the task of receiving confessions. When a confession is record-

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ed by a Magistrate there is a feeling that the confessions may have been made voluntarily. The first stage of severity is not fully justified, when a confession is recorded by a junior Magistrate. That may be the reason why the Legislature decided that, only sessions and Magistrates should be concerned with the responsible work of recording confessions, and non-qualified Magistrates should not be permitted to interfere in this.

In *Rao Singh v. State* (1), it was held by a Division Bench of the court that the provisions of sections 161 and 164, Criminal Procedure Code are to be strictly followed by Magistrates. Unless they follow the provisions of these two sections, the statements recorded by them cannot be admitted in evidence.

The learned Deputy Government Advocate distinguished the present case from *Narsi Ahmed's case* (2) as stated to allude. He pointed out that, in *Narsi Ahmed's case* (2) their Lordships of the Privy Council had to deal with a first class Magistrate, who had not recorded a confession as required by section 164, Criminal Procedure Code. On the other hand, in the present case we have to deal with a second class Magistrate, who proceeded to act under section 164, Criminal Procedure Code. It is true that, in *Narsi Ahmed's case* (2) the question of a confession recorded by a second class Magistrate did not directly come up for consideration. It may, however, be pointed out that, in considering the true scope of sections 161 and 164, Criminal Procedure Code their Lordships considered the general problem of confessions recorded by Magistrates. It may be that their Lordships' observations as regards powers of second class and third class Magistrates were obiter. None the less their Lordships' observations are entitled to great weight.

(1) 17 B. 263 A.B. 264.

(2) 17 B. 203 P.C. 202.



The Revised Reports Government Almanac contained all these, although Privy Council decisions were binding on Indian High Courts up to 1923, those decisions are no longer binding on those courts after the commencement of the Constitution. This contention is not correct. In *Pratap Rao v. Marappa* (1) it was pointed out that Article 221 of the Constitution lays down that, the law administered in any existing High Court remains the same as immediately before the commencement of the Constitution. So the law laid down by the Privy Council which does not conflict with any decisions of the Supreme Court would be binding on Indian High Courts. In *Marappa v. Marappa* (2) their Lordships of the Supreme Court observed on page 187 that, a decision by the Privy Council was an authority binding on Indian Courts. They could not refuse to follow such a decision. In *Deo Bansi Lal v. Rabi Kantari* (3) it was held on page 137 that, an order of a division of the Privy Council containing as it does an enunciation of principle or exposition of a rule of law, the statement would be binding on the courts by India unless and until the law is held to be different by the Supreme Court. Similarly in *State of Bombay v. Chhatrapati Lal* (4) it was held by a Full Bench of that court that, as long as the Supreme Court does not take a different view from the view taken by the Privy Council, the decisions of the Privy Council are binding on Indian High Courts. They are not overruled by any Supreme Court decision, as unlike the Privy Council decision in *Meer Ahmad's case* (5) was disowned from. On the contrary, as *Shri v. Balabhai Singh v. State of Madhya Pradesh* (6) their Lordships of the Supreme Court quoted *Meer Ahmad's case* (7) with approval, on page 153. We, there-

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(1) A.I.R. 1950 Mad. 568.

(2) A.I.R. 1950 Mad. 446.

(3) A.I.R. 1952 P.C. 185.

(4) A.I.R. 1951 Mad. 547, 555.

(5) A.I.R. 1951 Bom. 1.

(6) A.I.R. 1953 N.C. 392.

(7) A.I.R. 1953 N.C. 392.

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last, take it that, the Policy Council decision in *Nisar Ahmed's* case (1) is still good law.

It is explained in *Nisar Ahmed's* case (1) that, section 164 Criminal Procedure Code is a provision conferring powers on Magistrates and debarring them. Section 164, Criminal Procedure Code empowers Magistrates of certain classes to record statements and confessions. By implication, Magistrates falling short in the statutory class have been prohibited from recording confessions. If a Magistrate records a confession against the implied prohibition contained in section 164, Criminal Procedure Code, such a confession would be inadmissible in evidence. We, therefore held that, if a second class Magistrate, who is not specially empowered under section 164, Criminal Procedure Code, purports to record a confession under section 164, Criminal Procedure Code, the confession is inadmissible in evidence. Consequently, Nos. Ka-16, Ka-23 and Ka-24 are inadmissible in evidence. These confessions cannot be used either against the persons who made them, or against the co-accused named in the confessions. These confessions cannot be used for any purpose whatsoever.

The prosecution has led evidence on the following points:

- (a) previous enmity between Abdul Rashid accused and Raja Ram deceased,
- (b) Abdul Rashid's attempts, some two months before Raja Ram's murder to get him murdered through 'Mikandas Singh',
- (c) conspiracy among the wives accused on the day of the occurrence about two hours before the murder,
- (d) identification of the Sakh accused in jail and before the Court,

(c) confessions of Sughra Singh, Be Singh and Tega Singh; and

(d) the fact that Rashid and Zameer accused absconded.

Now, the prosecution evidence on the question of conspiracy is available. The evidence of identification does not support conclusion. The confessions are inadmissible in evidence. The only points, which the prosecution has been able to establish, are these. Relations between Abdul Rashid accused and Raja Ram deceased were strained for some time before Raja Ram's murder. Rashid and Zameer accused were absconding in October, 1949. This evidence is not sufficient for proving any offence against any accused. There was previous enmity between Abdul Rashid accused and Raja Ram deceased. Abdul Rashid's name was prominently mentioned in the report (Ex. Ka 10). Zameer is said to be related to Abdul Rashid accused. That may be the reason why Abdul Rashid and Zameer accused got panic-stricken, and absconded. The evidence on the record is not sufficient for establishing any offence against any one among the seven accused.

In the result, Criminal Appeals no 2017 of 1960 and 2008 of 1960 are allowed. Sughra Singh, Be Singh and Tega Singh are acquitted of the various offences, for which they were convicted by the learned Sessions Judge. These three persons shall be released immediately, unless there are requirements to the contrary. Government Appeal no 207 of 1961 is dismissed. The sentence is repeated.

*Appeal allowed.*

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Judge  
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## APPELLATE CIVIL

*Before Mr. Justice Holmes and Mr. Justice Lull.*

*Mr. F. EUGSTER (Appellant).*

*or*

*Miss JUNE EUGSTER, vs. OGDEN (Respondent).*

*Code of Civil Procedure, 1900, § 13 and G. D. W. 1—Place of  
residence when ascertainable—See under G. D. W. 1—Status  
and order of.*

In the appeal the most legal place asked was that the case  
was heard by the principle of res judicata and G. D. W. 1  
C. 2, C.

The court after considering these places held:

(1) that where the law of a State of G. D. W. Code of Civil Procedure  
was applied and had to be taken into account for and with the  
limitation of res judicata and what were the persons and things  
one of the other was and also whether where the law was not  
that on the alleged cause of action there could any alleged claim  
of action within the area in such the remedy which is that  
ought to be the actual one.

(2) that in order to support the law of a State of G. D. W. Code of  
Civil Procedure when had to be determined who was the person  
having the jurisdiction of the case and whether the plaintiff  
or not the relief could include the plaintiff or not, it being a  
fact which could include the relief which was sought by the  
actual one.

(3) that in a certain sense the law of a State of G. D. W. Code of  
Civil Procedure was to be determined with the law required by a  
State of the Code and certain other laws which could be applied  
under the general law of res judicata.

(4) that a law of G. D. W. Code of Civil Procedure was not  
with a matter of substance but was one of procedure though  
then, apparent adequate reason for sustaining such a procedure  
of law.

(5) that the place of residence could only be, legally, if it  
could be held that the person or the respondent was clearly and  
definitely in such or took the suit in that any person  
which might and might or have been made the person of all the  
State or much in the former one had been considered.

*Concise statement.*

First appeal on 24th of 1900, from a decree of N. N.  
Barnes, Additional Civil Judge, Maculabed, dated the  
4th June, 1900.

The facts appear in the judgment

to, *versus*, for the appellant

S. N. Misra, for the respondents

The judgment of the Court was delivered by—

MURRAY, J. —This is an appeal by one of the defendants, namely the first defendant, Fred Eugster, against a decree made by the learned Civil Judge of Allahabad making a declaration in favour of the plaintiff to the effect that the plaintiff was the owner of a sum of Rs 85,000-10-0 held by the Allahabad Bank Limited, Allahabad Branch, in the name of the first defendant, i.e., Fred Eugster, which sum had been blocked by the Reserve Bank of India.

The plaintiff of the suit, Mrs. Mary Jane Eugster, was the wife of the appellant, Fred Eugster, who was the first defendant in the suit. The plaintiff and the first defendant got married sometime in the year 1916. It is admitted that they had known each other fairly well for a long time prior to their marriage.

The plaintiff had a post and that post appears to have played a very important and significant role in leading to the events which culminated in the *Impediment* (these were truly) between the husband and the wife.

Mrs. Jane Eugster was born, according to her, in Ireland in 1895. She married one O'Brien who, according to her evidence, was a barman. This marriage, according to the plaintiff, took place when she plaintiff was only 13 years' old. O'Brien died the same year that he married the plaintiff. After O'Brien's death the plaintiff married one Henry Thompson of Abchurch. Henry Thompson was a Scotch business man having a prosperous business of architects and engineers. Henry Thompson had an Engineering House in Allahabad under the name and style of

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Thompson  
v.  
Mrs. Mrs.  
Thompson  
Respondent

**“Forsaken Home”** Henry Thompson died in 1924, bequeathing all his wealth in India and in Scotland—and it may be mentioned here that, admittedly, he had a lot of wealth—to his wife. The bequest by Henry Thompson was a conditional one, the condition being that the wife would forfeit her right to the same in the event of her re-marrying.

It appears that Mrs. Thompson (as the plaintiff was at the time) had been carrying on a liaison with one Captain Visheshwarrao Singh, an officer of the British Cavalry. She married Captain Visheshwarrao Singh soon after Thompson's death, but the marriage was kept secret for fear that if the secret leaked out the plaintiff would get dishonoured and would only have a small allowance of Rs 750 a month from one of the estates of her late husband, Thompson. The marriage of the plaintiff with Captain Visheshwarrao Singh became known as such secret things leak out with the result that the plaintiff lost the estate of her late husband Thompson, and had to fall back on the monthly allowance of Rs 150, but she was fortunate enough in having a wealthy son-in-law, Sir Alec Shakespeare, who appears to have voluntarily made a monthly contribution of Rs 200.

The relationship between the plaintiff and Captain Visheshwarrao Singh became strained and a suit for dissolution of marriage was filed in the Allahabad High Court in 1929. This suit was, however, dismissed but it appears that subsequently a suit for judicial separation was filed and there was a compromise in the suit, and a consent decree for judicial separation with a fixed allowance of Rs 225 per month was made. This happened on the 26th of August, 1930. In 1934 Captain Visheshwarrao Singh made an application in the Court of the District Judge, Meerutabad, for a decree for the

division of marriage and for damages and costs—the damages and costs were claimed against Fred Engner, the first defendant in the suit. On the 7th of August, 1934, the then District Judge at Mandakish granted a decree for dissolution of marriage. The marriage with Fred Engner took place after this, on the 2nd of December, 1934. The marriage of the plaintiff with Fred Engner had no issue until 1945 when a son was born named Yehang. It appears that Fred Engner decided to quit India and towards that end he got his wife to agree to the sale of the house named 'Believer' at Mandakish for a sum of Rs.74,800. This sale took place on the 5th of June, 1945. It appears that Fred Engner, who had knowledge of "gas business", having been an employee of Messrs. A. D. Meyer who did gas business in India and outside, gave up A. D. Meyer and started a gas business of his own under the name and style of "Fred Engner Exports" at Mandakish. This business was also sold along with the goodwill for Rs.75,000 by a sale-deed, dated the 1st of January, 1946.

After the sale of the house and the gas business it appears that the Engners went to Switzerland. Fred Engner was a Swiss and it appears that the wife of the mother plaintiff drew her share, while Mrs. Engner stayed behind him. Life in Switzerland did not appear attractive to Mrs. Engner. She longed to get back to India which death held her fancy more deeply and truly than it did Fred Engner's. The Engners returned to India. Mrs. Engner, apparently, with one object, while Mr. Engner had another object in view. It is necessary here to mention that after the sale of the properties a lot of money collected in the hands of the Engners had consequently their bank balances at the Allahabad Bank Limited, Mandakish Branch, swollen. There was at that time more or less a sum of Rs.1,65,500 in this bank standing in the name of the first defendant

1934  
No. 2  
Mandakish  
and  
Yehang  
Engner





that on 11.12.2012 not always his terms he has decided to give his unconditional clear instructions and has asked us to cancel the said transfer of Rs. 74,800. On the other hand he has authorized us to pay you every month starting from the July a sum of Rs.400 from his account, subject to the sanction of the Reserve Bank of India. He has further asked us to reverse the deposit amount for Rs.74,800 as his own name after a sum of Rs.3,500 thereon is transferred to his blocked current account to meet your monthly expenses."

Obviously the result of the letter of the Allahabad Bank of Allahabad referred to above was that the plaintiff was unable to get the said amount of Rs.55,000. It is necessary to state here and now that the above quoted, so called, certificate issued by Mrs. Eugene, the plaintiff, by which she purported to give up her tucker claim on her husband was a conditional one, dependent upon her getting the money mentioned.

The plaintiff claimed that the entire money which went in the name of her husband, Fred Wagner was hers, though it could be said with some amount of fairness that she had been a bit wealthy in the past.

In 1991 the plaintiff filed a suit in the court of the Civil Judge, Moradabad (suit no. 81 of 1991). In this suit she claimed a declaration that she was the full and absolute owner of the sum of Rs.15,000 without any reservations attaching to it out of the blocked amount of Rs.1,63,140 which stood in the name of the first defendant at the Al-Farooq Bank, Lucknow, Moradabad. This suit was disposed on the 26th March, 1992. It was dismissed before so that it was only as a result of the also mentioned decree the plaintiff was able to get Rs.70,000 from the Al-Farooq Bank. The plaintiff, in

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The Reserve  
Bank  
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we pointed out earlier, wanted all the money that was left over at the Allahabad Bank, Moradabad, and which stood in the name of the first defendant, Fred Eugene, but she was unable to get it.

On the 18th December, 1952, the plaintiff filed the suit out of which the present appeal has arisen, the main relief in the suit being worded as follows:

"It may be declared that the plaintiff is the owner of Rs 25,000 more or less, i.e., of all the money standing in the Allahabad Bank, Moradabad, in the name of defendant no. 1 and which has been blocked by the Reserve Bank of India."

To this suit the plaintiff had the Allahabad Bank Limited, Moradabad, and the Reserve Bank of India as defendants though no specific relief was claimed against them.

Fred Eugene, who was Defendant no. 1 to the suit, filed a written statement and his main plea was that the money in respect of which the plaintiff had made her claim was his and not the plaintiff's. It may here be mentioned that the plaintiff's case was that her husband Fred Eugene had not enough money either to buy the land for the house, or build the house at Moradabad, or to invest in the "gas" business and the entire money with which the properties were bought and a business started and carried on was the plaintiff's money. The defendant had only his labors and knowledge to offer in furtherance of the business. Fred Eugene made a correct statement that the plaintiff had not the means to invest her money in the business. He claimed that the entire money invested in the business was his and that the plaintiff had no claim whatever in respect of that business which was disposed of by him (as he then first said). The defendant admitted in paragraph 13 of the additional plea, in his written state-

about first he had about two of rupees to his credit and out of that sum of 2 he took of rupees a sum of Rs.10,000 only was piloted by the Reserve Bank of India to be transferred to his account. The defendant pleaded that by virtue of the alleged certificate, the one which Mrs. Jagan Deyan signed on the 19th of November, 1948, relinquishing in so much, her family claims on her husband the plaintiff could not make any further claim on him. The defendant, by an additional written statement filed on the 18th June, 1953, raised one further plea, one of estoppel, and the other of a bar of O. S. 1, 2 of the Code of Civil Procedure.

On the respective cases of the parties, which we must gradually consider, we see no difficulty and naturally just as could be conceivable and a large number of facts, as there is 14, were struck by the trial judge. It is not necessary for us to quote the same. What, however, is necessary is to set out the main points of disagreement between the parties.

The most important controversy on facts was as to whether the husband or the wife was the owner of the money, in dispute with the Allibabai Bank Limited, Bombay, French, and standing in the name of the defendant and in respect of which the declaration as the recent suit was claimed.

Of the legal plans raised the ones that served most firms were the following:

- (c) Which set is barred by the principle of non-adjunction or by  $\bar{O} \leq \alpha \leq \bar{C}$ ,  $\bar{F} \leq \bar{C}^2$  and
- (d) Which set may be used to be barred as an example of oneself?

A plea of immaturity was also raised in the trial court but no such plea was presented before us in appeal, although there was a ground to that effect in the grounds of appeal.

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Before we express our opinion on the conclusions mentioned above, we wish to repeat the findings stated as to the learned judge below. The court below has in effect found that the money which stood in the name of the first defendant belonged to the plaintiff. The learned Judge found that the plaintiff's suit was not barred either by estoppel or by § 2, s. 1 C. P. C. or by any principle of estoppel. On the question of limitation the learned Judge was of the opinion that the suit was within time.

The first question for our consideration must be the question of fact, namely was the money, in deposit with the 'Mishwan Bank, Mandelbad, standing in the name of the defendant, his or the plaintiff's?

A decision on the aforementioned question had to be arrived at on some oral testimony which was led in the case and on circumstances which had to be culled from some documents on the record and the opinion of the parties. The documentary evidence directly supporting upon the question of the ownership of the money was the receipt of the bank showing that the money stood in the name of Fred Eugene, the defendant. The burden of proving whether the money belonged to the defendant or the plaintiff obviously lay on the plaintiff. The banks could not be said to have been discharged by the plaintiff on the strength of her oral evidence alone nor could we say that the defendant had by his evidence established that the money was his. Fortunately there were a large number of circumstances which aided mutually in the determination of the aforementioned issue.

The history of the plaintiff's past, her status and position in life, which we have noticed in the early part of our judgments clearly established that the plaintiff was in a position to possess a large amount of money. The life history of Fred Eugene, on the other hand did not

article for a sound financial position. The plaintiff of a retired rich husband. Of all her husband's and she had quite a few. Henry Thompson was apparently the richest, for he had a very prosperous business of appliances and appliances at Alhambra. On Thompson's death she had the entire estate of Thompson in her hands including liquid cash. It is true that there is no direct evidence of the fact that large sum of liquid cash came to her hands, but from what we shall say immediately hereafter would lead a good deal of assurance to our belief that she had in her hands a lot of money. It is clear on the evidence that she lived well. It is also clear that when she was in Chicago in 1911 she had a list on a monthly rent of \$200 and at that time the defendant Fred Eugene Bend with her. We have the evidence of the plaintiff that she received \$2,000 a year from Mr. Alie Shalagren, one of her sons-in-law. It is also clear on the evidence that she received about \$750 a month from Yrnsel Hines and on the top of that she had monthly assistance from her son-in-law Mr. Alie Shalagren and an allowance from Captain Visheshwar Nath Singh. So that, she was in fairly affluent circumstances. Compared to her financial position the defendant's was poor. The defendant started on his own showing as an assistant in the firm of A. D. Meyer at \$2,000 per month and never got beyond \$2,250 per month. According to him, he received a bonus of \$2,500 a year. There is nothing on the record to substantiate either of the two statements of the defendant, namely, that since 1910 he drew a salary of \$2,200 a month or that he got \$2,500 a year as bonus. We, however, have from his own evidence the fact that when his services were terminated or when he got out of A. D. Meyer's business he did not get more than \$2,500 from Meyer. A. D. Meyer. This is clear from the answer he gave to question no. 94 of the

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interrogatories (para 38, page 46). It is clear from his own statement that he had to borrow 500 Francs from his uncle though he claims to have repaid the money. He asserted that in 1934 his capital amounted approximately to Rs 45,000. To a question set out in cross-interrogatories to the effect as to what he took home was at the time when the land for the building of the house at Wandahad was purchased the defendant's answer was that his capital at that time, approximately was Rs 35,000. The defendant was asked as to what the construction of the house cost. He replied that approximately it cost Rs 29,000. There is something further in the statement of the defendant which made it rather difficult for him to possess a large sum of money, even if he earned it, in his credit account in India, for he stated in answer to question no. 41 of the cross-interrogatories that he transferred every second month money to Switzerland during his 22 years' stay in India. If this was true, then he could not possibly have had a large sum of money standing to his credit in the bank.

Admittedly the land on which the house 'Bellver' built had been purchased by the plaintiff, for the sale deed stood in his name and there was nothing to indicate that what was recited in the sale deed was not true. The land was purchased from one Luis Doyal on the 6th of August, 1932 for a sum of Rs 4,500 when this house was sold in June, 1945 to Marguitta Perry Meyer-Schelling for Rs 74,000 the vendors were both the husband and the wife. The sale deed recited that the vendors had built the house named 'Bellver' and the outhouse. The mere joining of the defendant Fred Wagner in the sale-deed did not necessarily show that he had any legal right in the property, particularly when we know that there is a tendency amongst buyers of property to include in the sale-deed as vendor any

one who could at some future date make a claim to the property. Looking on the premises as an apartment the master of the house, Fred Engster, could as a legitimate proposition be added as a vendor. Therefore, the story fact that Fred Engster was a comrade with the plaintiff could necessarily lead to no adverse conclusion against the plaintiff.

From the admission of the defendant to which we have already referred it is clear that he could not possibly have had much money at his hands at the time when the gas business was started. Obviously, the plaintiff made an attempt through the cross-interrogatories to get the defendant to admit that he had no hand in getting the house "Bellevue" constructed at Merida, Ind. Towards the above end, among other questions, the following question was put:

"Is it not a fact that when you arrived from California with the plaintiff in the evening at Merida, Ind. you were furnished and stood at the gas (maining of the house) among Bellevue 'W. Merida'?"

It is significant that the defendant refrained from answering this question and took refuge behind a failing memory, for he answered "I do not remember it very well."

It appears to be admitted between the parties that one Mr. Randolph constructed the house at Merida, Ind. It also appears that Mr. Randolph was paid for it. The defendant was asked this question (Question no. 62 of the cross-interrogatories):—

"Was the money spent in the construction of the house paid to Randolph by means of a check or otherwise?"

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the 1st of January, 1906, had been jointly executed by David Tagore and the plaintiff Mary Jane Tagore. If the plaintiff Mary Jane Tagore had no interest in the business then it does not appear necessary to have the plaintiff as one of the vendors, for the position in respect of the sale of a business was different from the position then obtained in respect of the sale of a house. It is interesting to note that Mangmaha Fung, Mayer Schelling was the purchaser of the house and also a co-purchaser of the business. The purchasers apparently were the three owners of the firm which had, or one of the branches of which had, at one time the defendant as one of the employees.

We are, therefore, of the opinion on the evidence and assumptions appearing on that evidence that the money that was necessary for building up the gas business at Mondahat had also been advanced by the plaintiff. The defendant may have had an interest in the business, in equity as in law as he brought his labour and knowledge to run the business, but for this he has had more than compensation. He had taken out large sums from this business which he transferred to Sarineral, in which no share has been claimed by the plaintiff. So far, it could not be said on the defendant's behalf that there should, "in equity" be any apportionment or that the plaintiff could not lay claim to the entire sale consideration of the business.

The question that now falls for our determination is, could the plaintiff be deprived of the decree that has been made in her favour on any of the legal grounds which we have mentioned earlier, namely, on the ground of res judicata, law of Or 2, r 2, C. P. C., or any principle of estoppel.

The plea of res judicata and the plea of or 2, r 2, C. P. C. were more or less interconvertible, but in order

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to attach both the plea referred to and to be placed on the ledger between the husband and the wife which constituted a divorce in favour of the plaintiff on March 28, 1942. Order 7 rule 2 is in these words:

"(1) Parties may shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.

(2) Where a plaintiff wishes to sue in respect of or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so abandoned or relinquished.

(3) A portion included in more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he sues, except with the leave of the court, for one for all such reliefs, he shall not afterwards sue for any relief so obtained.

**EXPLANATION.**—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."

In order to determine what exactly was meant by the expression "cause of action" and what was the scope of the words "any of such reliefs" in clause (3) of the rule, the explanation which is appended to this rule supplies a fair key to its interpretation as well. In respect of the application of this rule, there are many cases in which the effect of the bar was considered. In *Muhammad Maje v. Mirza Muhammad Zahiruddin* (1), their Lordships of the Judicial Committee of the Privy Council had occasion to express their view as regards the true scope of this rule. Their Lordships explained that—

(1) 4 F.R. 196 P.C. 46.

The cause of action (injury) used in this rule, related to cause of action which gives occasion up, and forms the foundation of, the suit, and if that cause enables a man to seek for larger and wider relief than that to which he limits his claim, he cannot afterwards seek to recover the balance by independent proceedings."

1881.  
In *T. F. Broun*  
v.  
The First  
National  
Bank.  
[1881.]

We may also refer to the case of *Mohamed Khalil Khan v. Mahomed Ali Khan* (2) wherein their Lordships of the Privy Council pointed out that the cause of action in the two suits could be considered to be the same if in substance they were identical, so that on the strength of this case, identity of the subject matter was (as an important circumstance) to be considered in determining whether the bar of rule 2 could arise or not.

From the above it follows clearly that where the cause of action and the remedies sought are distinct or different there could be no bar under this rule. What is important to observe is that the cause of action referred to in the rule was that which gave occasion to and forms the foundation of the suit. Therefore, where the bar of rule 2 was pleaded one had to see what gave occasion up and was the foundation of one suit and what was the occasion and foundation of the other suit. One had also to see whether when the first suit was filed on the alleged cause of action there could that alleged cause of action enable the man to seek the remedy which he had sought by the second suit. The fact that certain common allegations of facts appear in the two suits, the further fact that it became necessary, as a part of introducing the subject matter of the suit as set off to recite material facts and the fact that the result of this so called *material* facts was similar in both the suits did not attract the bar of rule 2 of order 2. In

1954,  
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Law Reports  
1954, p. 522.

order to attack the bar of this rule, what had to be determined was whether what formed the foundation of the suit and enabled the plaintiff to seek his relief could enable the plaintiff to seek a larger relief which would include the relief which was sought by the original suit. We can readily refer to the case of *Joshi v. Baidar Singh* (1) wherein Macpherson, C. J. and Anwar-ul-Haqq, J., pointed out that—

"In order that the cause of action for two suits may be the same for the application of order 2, rule 2, it is necessary that not only the facts which would enable the plaintiff to establish his title to the property claimed in the two suits be the same but also that the attack on the title or the infringement of the plaintiff's right in the hands of the defendant must have arisen in substance out of the same transaction."

We emphasize the words "same transaction". We think that in a certain sense the bar of rule 2 was in part met with the bar created by section 11 of the Code and common law bars which could be pleaded under the general head of "rescoped". The courts do not strictly pronounce a bar against the plaintiff to deny him the relief claimed. A bar has to be strictly made out. A bar of O. 2, r. 2 was not really a matter of substance but was one of procedure though there appeared adequate room for reasoning such a procedural bar.

Keeping in view what we have said as to the nature of the bar available under rule 2, we have got to see whether on the facts and circumstances of the case Original Suit no. 31 of 1953 provided sufficient material to establish the bar of this rule.

Original Suit no. 31 of 1953 was filed on the 25th August, 1951. The plaintiff in the suit was "M/s. Jagan

Exhibit, the same person as is the plaintiff in the suit on which this appeal has arisen. Defendants in the suit were also the same persons as in the present suit, namely, Fred Eugene, the Allahabad Bank Limited, Mercantile Bank, and the Reserve Bank of India. Quite a large number of allegations in the two suits—Sut no. 81 of 1910 (you shall hereafter call it the 1910 suit) and Sut no. 154 of 1932 (you shall hereafter call it the 1932 suit) out of which the present appeal has arisen—were common. In both the suits the plaintiff June Eugene thought it advisable to raise the entire history which culminated in 1951 in that suit and subsequently the same facts with those additional things that accompanied the 1952 suit. In the 1931 suit the declaration that was sought was this,

“That it may be declared that out of the blocked account of Rs.1,57,500 or thereabout standing in the name of defendant no. 1 with the Allahabad Bank Ltd., Mercantile, Defendants no. 2 the plaintiff is the full and absolute owner of Rs.75,800 without any conditions whatsoever.”

In the 1952 suit the declaration that was sought was this

“(a) It may be declared that the plaintiff is the owner of Rs.65,000 more or less, i.e., of all the moneys standing in the Allahabad Bank, Mercantile, in the name of defendant no. 1 and which has been blocked by the Reserve Bank of India.”

Even a cursory comparison of the two reliefs quoted above would show that there was in substance a difference in the two reliefs claimed. The difference that made us apprehend in the two reliefs arose because the basis of the two suits, in substance was different. The 1931 suit had to be filed because Fred Eugene the

1. **Introduction**  
 2. **Background**  
 3. **Methodology**  
 4. **Results**  
 5. **Conclusion**  
 6. **References**

agreement, in this regard, went back to the understanding which he gave to the plaintiff and on the basis of which understanding the plaintiff guaranteed the so-called "live loan." Ex. A-4. The 1931 loan was consummated by the fact that the plaintiff was unable to get the \$15,000 which she had in any case, got out of the estate money; that upon the name of her husband Fred Eugene. The cause of action for the 1931 suit was in essence the alleged unlawful act of Fred Eugene in placing obstacles, contrary to the agreement, in the plaintiff obtaining the sum of the \$15,000 from the Allied Bank. The cause of action for the 1932 suit was not, that the cause of action for the 1931 suit lay in, the husband, Fred Eugene, lying a claim to the estate money bill by the Allied Bank Limited, Manchester, New York, the money which had been locked up by the Eastern Bank of India.

Three Lordships of the Privy Council, as we have pointed already in the case of *Mohammed Akbar Khan* (1), pointed out that the cause of action in the two suits could be considered to be the same if or inasmuch as they were identical. Earlier in 1878 their Lordships in *Mohammed Rafiq's* (2) answer case which also in 1878 already incidentally pointed out that the law of Art. 12 could only apply if the cause of action which gave occasion to and formed the foundation of the action was identical the plaintiff as well as larger or a victim to the fact which could include the relief which was sought by the subsequent suit. Applying this rule to the facts and circumstances of the present case, we find that on the cause of action which gave rise in the 1914 suit the plaintiff could not possibly claim any larger relief than when the first claim, for the model was shown & declared upon as superior of the earlier motion on that cause of action, though it may be that as the date of the plaintiff

asserted the truth by differentials, claiming her own and alleging his cause of action differently, have claimed a larger relief, but the bar of rule 2 does not arise on what the plaintiff could do in respect of her rights on a particular date, under the law she could for each cause of action file a separate suit and seek the relief that that cause of action could give her.

In *Julius & Rose's* (1) case—a case we have already mentioned—Bench of this Court pointed out that in order that the cause of action for two suits may be the same for the application of the bar of rule 2 it was necessary that not only the facts which would entitle the plaintiff to establish his title to the property claimed in the two suits be the same but also that the attack on the title or the infringement of the plaintiff's right or the breach of the defendant's duty have, in substance, arisen out of the same transaction. Applying this test to the circumstances of the instant case pointed above, we could not possibly say that the infringement of the plaintiff's rights had a common basis.

For the reasons advanced above, we are of the opinion, therefore, that the person who was not barred by Q. 3 c. 1 of the Code of Civil Procedure.

The plea of res judicata could only be available if it could be held that the matter in the two suits was identical and substantially an issue in both the suits or that any matter which might and ought to have been made the ground of defence or attack in the former suit, has been omitted. We do not find any of the necessary ingredients on which the bar of res judicata could be raised made out. In our judgment therefore, the suit was not barred by section 11 of the Code.

A half-hearted attempt was made by Innes to respond to evidence of the role of smugglers against the sheriff, but



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we were unable to see how any rule of evidence would render assistance to the defendant as against the plaintiff in this suit. We accordingly found no substance in this plea either.

For the reasons given above we are of the opinion that there were no errors in this appeal, which must fail, and we accordingly dismiss it with costs.

*Appeal dismissed.*



## CRIMINAL REVISION

*Before Mr. Justice Lingappa and Mr. Justice  
Rameshchandra*

**SRINATE SHAKILA**

**STATE**

**Suppression of Immoral Traffic in Women and Girls Act,  
1947 s. 20—B** is complainant is complainant in the complaint against a person suspected of having committed an offence under the Act.

The question referred to the Division Bench was whether a magistrate is competent to file a complaint against a person suspected of having committed an offence under the Suppression of Immoral Traffic in Women and Girls Act of 1947.

The Court then considering in detail, held—

(i) that it is not a necessary condition for the operation of the provision under the Suppression of Immoral Traffic in Women and Girls Act of 1947 against an offender that a complaint should be filed before a Magistrate by the Special Police Officer. The Act has not placed any burden on the powers of a Magistrate to take cognizance of an offence, from any source whatsoever.

(ii) that there is no warrant for the proposition that cognizance of an offence under the Act cannot be taken except upon a report submitted by a special police officer.

(iii) that s. 3 of the Act does not require any, but in the filing of a complaint by a Magistrate of the fact that upon a person suspected of having committed an offence under the Act and that the case is cognizable is defined in the law has jurisdiction to take cognizance of an offence on such complaint.

Criminal Revision no. 1229 of 1960 from an order of S. K. Subramanya, Additional Sessions Judge of Koppal District; Koppal dated the 17th May, 1960.

The facts appear in the judgment.

C. S. Sharma, for the applicant.

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Assistant Government Advocate for the opposite party.

The judgment of the Court was delivered by—

CHIEF J. —The question raised in this reference is whether a magistrate is competent to file a complaint against a person suspected of having committed an offence under the Suppression of Immoral Traffic in Women and Girls Act (194) of 1956, hereinafter referred to as the Act.

The facts briefly stated are that at about 8 p.m. on the 18th March, 1963, S/o B. N. Rao, a Magistrate of the 1st class, Raipur, found the applicant soliciting persons by words, gestures and verbal exposure of her person, for the purpose of prostitution. He placed her under arrest and filed a complaint for her prosecution under section 3 of the Act. An objection was made by the applicant in court against her prosecution challenging the validity of the complaint on the ground that she could only have been prosecuted on a charge-sheet submitted by a 'special police officer', appointed under the Act and not on a complaint filed by the Magistrate. Her objection was over-ruled by the trial court and the Additional Sessions Judge upheld that order in revision. She then filed a motion in this Court out of which this reference has arisen.

The learned counsel appearing for the applicant has raised two questions before us, firstly, that a 'special police officer' appointed under the Suppression of Immoral Traffic in Women and Girls Act, can alone institute prosecutions in respect of offences mentioned therein under, and secondly, that the Act being a self-contained enactment, it was not permissible to enlarge the power of a magistrate by reference to the provisions of the Criminal Procedure Code, hereinafter referred to as 'the Code

The Suppression of Immoral Traffic in Women and Girls Act is a special law which prescribes a special procedure with respect to the arrest, investigation and trial of the offences mentioned in the Act. Section 2(5) defines a special police officer as meaning a police officer, appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of the Act. Section 13 states that there shall be, for each area to be specified by the State Government in this behalf, a special police officer appointed by or on behalf of that Government, for dealing with offences under this Act in that area. It is further provided that in areas outside the Presidency towns of Madras, Calcutta and Bombay an officer of the rank of a Deputy Superintendent of Police shall be appointed as a special police officer for dealing with offences under the Act. Section 14 makes all the offences punishable under the Act to be cognizable offences. Section 15 makes provision for the search by special police officers of premises which may be suspected of being used for the purpose of prostitution. So much about the powers and functions of a special police officer appointed under the Act.

Coming now to the powers which may be exercised by a Magistrate with respect to offences falling under the Act it is provided in section 2(6) that a Magistrate specially empowered by the State Government shall exercise jurisdiction under the Act and that such Magistrate shall be a District Magistrate, a Sub-District Magistrate, a Presidency Magistrate or a Magistrate of the 1st class. Under section 12(4), a Magistrate on receiving information from the police or otherwise, that any person within the local limits of his jurisdiction habitually commits or attempts to commit, or any offence under this Act, may require such person to deposit some sum which should not be ordered

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to receive a bond for her good behaviour, etc. Section 85 authorizes that where a Magistrate has reason to believe, from information received from the police or otherwise, that a girl apparently under the age of 21 years, is living, or is carrying on, or is being made to carry on prostitution in a brothel, he may direct the special police officer to remove the said girl from the brothel and produce her before him. Information (1) of section 15 further provides that the special police officer, after removing the girl from the brothel, shall produce her before the Magistrate issuing the order, Section 16 gives power to a Magistrate to order, revoking of the scope of the premises, in respect of which he receives information from the police or otherwise that they are being used by prostitutes for carrying on their trade, etc. Similarly, section 20 empowers a Magistrate to issue notice to a woman or girl requiring her to appear before him and show cause why she should not be required to remove herself from any place situate within the local limits of his jurisdiction if he receives information that the said woman or girl resides or is frequenting any place within the local limits of his jurisdiction.

Thus the Legislature has defined and clearly distinguished between the respective powers and functions of a special police officer and a Magistrate, specially empowered in that behalf. There does not appear to be any ambiguity as to the intention of the Legislature in this matter.

Under the Act the special officer does not charge with the performance of police duties. He is in all respects and purposes a police officer whose powers are analogous to those of the police officer in charge of a police station in regard to the investigation of cognizable offences, as contemplated by the Code.

It was urged that the Act has created a special police officer with powers for 'dealing with offences' and that

this shows that no other person or authority is competent to initiate a prosecution for an offence made punishable elsewhere. We are unable to accede to this argument. The expression dealing with offences in section 19(3) refers to the police powers, conferred on a special police officer. It does not and cannot enlarge his powers. It simply means that the special police officer has been charged with the performance of police duties within a specified area for carrying out the purpose of the Act. The Act provides a special machinery for the performance of police duties by an officer special is appointed for that purpose. To this extent, the Act makes a departure from the provisions of the Criminal Procedure Code. Consequently, it follows that the duties which are normally required to be performed by the officer in charge of a police station shall be performed only by the special police officer, appointed under the Act.

The scheme and purpose of the Act clearly declare that the special police officer, who has been invested with police powers, may arrest an offender, search out storerooms of premises used for the purpose of prostitution and file a charge sheet in court against a person suspected of having committed an offence under the Act. At the same time, by other modes of inflicting punishment, as for example upon a complainant in a private party or upon his own knowledge or suspicion in a Magistrate, are not outside the Act. The Act is silent upon these matters, and it must therefore be held that the provisions of the Criminal Procedure Code would be applicable in regard to matters for which there is no specific provision in the Act. The above conclusion finds support by referring to sub-section (f) of section 1 of the Code which states that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions but subject to any enactment for the time being in force regulating

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the manner or place of investigating, requiring, oring or otherwise dealing with such offences. Therefore in so far as the Act makes provision for the offences being dealt with in a particular manner and by a particular officer or class of officers, the provisions of the Act shall override the provisions of the general law. It is necessary with respect to which the Act is silent the provisions of the general law will come into operation.

The learned counsel contended that the maxim '*Expressio unius est exclusio alterius*' applied to the case and that the special police officer having been invested with the power of dealing with offences under the Act, it should be held that the Legislature had implicitly precluded cognizance of cases in any other manner than that provided by the Act. The maxim is based upon the probable intention of the Legislature. Hence where that intention is clear the principle of the maxim is not applicable. In *Crawford's Construction of Statutes* at page 158 the learned author observes—

"The principle is to be used only as a means of ascertaining the Legislative intent where it is doubtful and not as a means of defeating the apparent intent of the Legislature. Where the statutory language is plain and the meaning clear there can be no implied exclusion."

In the present case the Legislature has clearly limited the power of the special police officer to those functions which are exclusively performed by the police officer-in-charge of a police station. Hence it follows that the other modes of initiating prosecution, by way of complaint or otherwise have not been excluded. Consequently it cannot be held that it was intended to exclude other methods of bringing offences to the notice of the courts.

It would thus appear that the cognizance of an offense on the basis of a complaint filed by a magistrate is not prohibited by the Act. Indeed, a reading of sections 16, 18 and 20 of the Act would go to show that a magistrate may take cognizance on information received from the police or otherwise in respect of offenses mentioned therein. Thus it is not a condition precedent for the institution of prosecution against an offender that the information should be laid before a magistrate by the special police officer. The magistrate is empowered under the Act to take cognizance of an offense on information received from any source or upon his own knowledge of the facts concerning the offense. The Act has not placed any limit on the powers of a magistrate to take cognizance of an offense from any source whatsoever. There is, therefore, no warrant for the proposition that cognizance of an offense under the Act must be taken except upon a report submitted by a special police officer.

We are clearly of the opinion that section 16 does not create any bar to the filing of a complaint by a magistrate of the 1<sup>st</sup> class against a person suspected of having committed an offense under the Act and that the court of a magistrate as defined in the Act has jurisdiction to take cognizance of an offense on such complaint.

This revision accordingly held and is dismissed.

*Revenue dismissed.*

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## CIVIL MISCELLANEOUS

*Before Mr. Justice Viscount and Mr. Justice B. Deyal*

**B. K. GUPTA (APPLICANT)**

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## CHANCELLOR, LUCKNOW UNIVERSITY

**LUCKNOW AND OTHERS (DEFENDENTS)**  
**Plaintiffs.**

**Lucknow University—Charges as to irregularity of Exam with reference to Justice—Chancellor's power to order re-examination—H. being justified and in the discharge of duty, and with the principles of natural justice—Lucknow University Act, 1902 s. 34—Articles Lucknow University, 35 and 36.**

On the recommendation of the Interim Committee, the post holder was appointed as professor for two years the Professor of Law in Lucknow University. Respondent no. 1 who had been a candidate for the said post made a representation to the Chancellor challenging the continuance of the Interim Committee and the validity of its recommendations and the resulting appointments. The Chancellor, in exercise of his power under s. 34 read with Article no. 3 of the Lucknow University Act sent for a copy from the University and after having the Vice-Chancellor for the University and Respondent no. 2 held that the Interim Committee had been rightly constituted with the result that its recommendations and the appointments based thereon were valid and good. The petitioner, therefore, moved the High Court for, inter alia, quashing the Chancellor's order.

**Held**, that the University of Lucknow under s. 34 of the Act being justified as a bona fide official act and those being bound to the various charges as to Article no. 3 representing the duty the Chancellor was bound to adhere to the principles of natural justice and since the petitioner who was directly and really affected thereby has not given any notice or opportunity for a hearing the impugned order was bad as law and liable to be quashed.

The validity of the appointments itself being in question, the law of the appointments remaining in position or the remedy through a reference or arbitration could not be pleaded as a bar to the suit.

**Case dismissed.**



Case Miscellaneous Writ no. 1754 of 1958

The facts appear in the judgment.

J. Farnish and R. S. Parikh, for the applicant

The Attorney-General (K. L. Munn), Senior Standing Counsel (Nicholas Plesant) and G. P. Sagh, for the opposite parties

The judgment of the Court was delivered by—

SARJEANT, J. —This is a petition under Article 101 of the Constitution. The material facts leading up to it are that in the University of London two positions, one designated as Professor of Law and the other as Professor of Constitutional and Administrative Law, were to be appointed. The appointment was to be made by the Executive Council of the University on the recommendation of a Selection Committee. There were four candidates for the two posts including the petitioner and the Respondent no. 3. The Selection Committee appeared for choosing the candidates and recommending them to the Executive Council met on the 15th of December, 1958, and after interviewing all the four candidates recommended to the Executive Council the petitioner for the post of Professor of Law and one Dr. V. N. Shukla for the other post. While the recommendations of the Selection Committee was being considered by the Executive Council on the 15th of December, 1958, an objection was raised that the Selection Committee which had made the recommendation was not duly constituted. The point was overruled by the Vice-Chancellor who was presiding at the meeting of the Executive Council. The recommendation of the Selection Committee was accordingly accepted and the Executive Council decided to appoint the petitioner as the Professor of Law. A formal letter of appointment was thereupon issued on the 22nd of December, 1958, appointing the petitioner as Professor of Law on proba-

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case for two years. The Respondent no. 3 then submitted a petition, dated the 22nd December, 1901, to the Chancellor of the Lucknow University through the Vice-Chancellor of the University raising the question whether the Selection Committee had been duly constituted and whether the acceptance of an appointment by the Executive Council and the resulting appointment of the petitioner as Professor of Law was valid. The question was submitted to the Chancellor for decision under section 19 of the Lucknow University Act. After hearing the respondent no. 3 and the Vice-Chancellor of the Lucknow University the Chancellor, now the Respondent no. 1, gave his decision on the 22nd of May, 1902. He held that the Selection Committee was illegally constituted and the decision of the Executive Council accepting the recommendations of the Selection Committee and the appointment made as a consequence thereof were null and void. He directed that a new Selection Committee should be constituted. The Vice-Chancellor, the Respondent no. 2, was directed to implement the decision by taking immediate action. In pursuance of this decision the Registrar of the University informed the petitioner by letter, dated the 3rd of June, 1902, that his appointment as Professor of Law stood recorded and that necessary action would be taken in due course to make an appointment in compliance with the decision of the Chancellor. On the 21st of July, 1902, the petitioner filed the present writ petition praying—

(1) That a writ, direction or order in the nature of certiorari may be issued quashing the order of the opposite-party no. 1 (Chancellor), dated the 22nd May, 1902.

(2) That a writ, direction or order in the nature of mandamus may be issued to opposite-party no. 2 (Vice-Chancellor), commanding him to give effect

to the resolution of the Executive Council, dated the 28th December, 1938, approving the petition. v. 8, 62-64  
 in Petition of Law

(5) That a para. direction or order in the nature of a writ should be issued restraining the opposite party no. 2 (Vice-Chancellor) from giving effect to the decision of the opposite party no. 1 (Chancellor) dated the 23rd Nov., 1938.

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 v. 8, 62-64  
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(6) That such other suitable writ, decree or order may be issued as may be deemed fit by this Hon'ble Court.

Several grounds have been put forward in support of the petition. Some of them relate to the merits of the decision of the Chancellor and try to make out that the Wisconsin Commission in question had in fact been properly constituted. It is also urged that the decision of the Chancellor is void vitiated as he has compromised an important principle of natural justice by deciding the matter without hearing the petitioner who was directly interested in the matter. It is further contended that the Chancellor had exceeded his jurisdiction and that an writ of habeas corpus should issue to free him from arrest on account of the offence for the purpose of deciding a matter within the scope of the Indian Petitioner Act.

The petition is opposed by all the three respondents. Certain affidavits have been filed by the Vice-Chancellor himself to the Registrar of the Court and to the Respondent no. 1.

When the petition was argued before the learned counsel for the petitioner did not consider it necessary to press all the grounds taken in the petition. The only ground he pressed was that the engaged doctrine was void to be quashed because a fundamental principle of natural justice had been compromised and the petitioner had been deprived of his post without being



proceedings, and was a properly constituted authority entitled to recommend the petitioner's appointment to the post. Both the questions raised were, therefore, covered by section 39 and could be raised under it.

The Advocate-General appearing on behalf of the Chancellor contended, and in our opinion rightly, that the proceedings under section 39 of the Lockwood University Act were quasi-judicial proceedings. The question was, however, not made by the learned counsel for the Respondent no. 4 and it was urged by him that whereas the Chancellor did under the section a purely administrative act, he pointed out that there was no law before the Chancellor and there was nothing in the request itself which required him to act judicially or quasi-judicially.

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Lockwood  
University,  
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Students,  
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University,  
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The section in the Alibabad University Act which corresponds to section 39 of the Lockwood University Act is section 42. It reads—

"If any question arises whether any person has been duly elected or appointed as, or is entitled to be a member of any authority or other body of the University, the matter shall be referred to the Chancellor, whose decision thereon shall be final."

Section 39 of the Lockwood University Act was also originally couched in exactly the same terms. By a subsequent amendment, however, the scope of the section was widened and the Chancellor was empowered to decide questions relating to the decisions of the University or any authority thereof and to find out whether they were in conformity with the provisions of the Act, statutes or ordinances. The addition did not, however, change the nature of the proceedings or of the powers which the Chancellor was to exercise under the section.

In *2d Intervenor Prasad v Registrar, University of Alibabad (I)* a question arose with reference to section

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42 of the Allahabad University Act as to whether the proceedings under it were judicial or purely administrative and *Worrell, J.* has for these words held:

"The expressions 'date stated or appointed' and 'entitled to be directly called, in an opinion, on the legal rights of the person concerned under the Act and Statutes, and the Advocate General agreed that the Chancellor could not otherwise dispose of the questions referred to him. In such circumstances I can entertain no doubt that the action imposed on the Chancellor the duty to act judicially in arriving at his decision."

The service was continued on special appeal by *Argue at Chancery at Allahabad v. Dr. Ishwari Prasad* (7). Dealing with the point *Worrell, J.* observed:

"The Chancellor has not only to exercise his discretion but he has to take a decision thereon which necessarily implies that, in determining the dispute referred to him, he had to act judicially."

The Division Bench decision is binding on us and if we now say in this respect we are in entire agreement with it. The contention of the learned counsel for the Respondents no. 2 that the Chancellor was only in his administrative capacity under section 19 does not appear to be tenable at all. He deals under the service with the questions raised and is expected to decide these questions. His decision is to be final. The decision is to be arrived at not for his own satisfaction but is intended to settle disputes relating to the rights and roles of persons who are members of an authority or other body of the University or are persons who are affected by the decisions of the University or are authorities thereof. While arriving at his decisions on these disputed questions, therefore, the Chancellor is expected to act judicially or at least quasi-judicially.

It is, however, urged that even if the Chancellor was required to act judicially as quasi-judicially while deciding the questions referred to him under section 29, it should not be forgotten that he discharged only a domestic function. Section 29 itself does not require that the procedure followed is to be followed in the Chancellor under 15 provisions. The only matter which had been framed with reference to the section in terms was 1, according to which the Chancellor in deciding the questions referred to him under section 29 may call for such documents or papers from the Comptroller or authority concerned as he may deem necessary. There is nothing, it is contended, either in the source or the nature requiring the Chancellor to act judicially as to act one or to hear any one. The Chancellor, it is pointed out, cannot be expected to follow, while deciding the disputes referred to him, the procedure laid down for a civil suit or for a criminal trial. In some cases it is, said, it will obviously not be very easy for him to know who are the persons who are interested in or are likely to be affected by the questions referred to him. A very large number of persons may be interested in some particular question. He cannot it is argued, be expected to give a hearing to all of them. The contention is that there are no rules of natural justice of individual application. The principle of natural justice which has to be followed by a particular domestic tribunal here is to be determined keeping in view the nature of the tribunal, the nature of the subject which it is formed and the circumstances in which it is required to act. The only rule of natural justice which the Chancellor could be required to follow, therefore, was that he should act in good faith, do justice according to his rights and follow the provisions of the Act and the statute. The doctrine of the Chancellor cannot it is urged, be measured simply on the ground

that no notice was given to the president and he was never given an opportunity to be heard.

It is true that the Chancellor was a domestic tribunal while performing his functions under section 50 of the Act. But a domestic tribunal is also bound to conform to the principles of natural justice as was laid down in *Singh Medical Faculty of West Bengal v. East Bengal Dist. Ct.* (2):—

"The decision of such a domestic body or a tribunal or a board particularly of a professional body can only be interfered with by the courts of law on three main principles, namely, (1) that such domestic authorities have acted under bias or in bad faith and mala fide, (2) that such authorities have violated the principles of natural justice in the proceedings and conclusions before it and (3) that such domestic authorities have exceeded their jurisdiction under the statutes, rules and regulations, regulating their duties and procedure."

These principles were deduced from the decisions in *Thompson v. New South Wales Branch of the British Medical Association* (2) and *Secretary of State v. Mack and Co.* (3). It cannot, therefore be said, that a domestic tribunal is at liberty not to follow the principles of natural justice and that its decisions cannot be questioned even if it does not follow such principles.

Of course, as laid down by the Supreme Court in *The New Frankish Transport Co., Ltd. v. The New Singapore Transport Co., Ltd.* (4) and again reiterated in *Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam* (5):—

"The rules of natural justice vary with the varying constitutions of statutory bodies and the rules

(1) A.R. 1950 100, 101, 102, 103. (2) L.R. (1949) A.C. 10, 101.  
(3) 1949 L.R. 10, 101. (4) L.R. 1950 100, 101.  
(5) A.R. 1950 100, 101, 102.



presented in the Act under which they function. — and the question whether or not any rules of natural justice had been contemplated, should be decided not under any pre-conceived notions, but in the light of the statutory rules and provisions.

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The main purview of the petition is that the Chancellor should have decided the question referred to him without giving the petitioner an opportunity to be heard. It cannot be denied that the principle that no case should be considered unheard and that no decision affecting any person should be arrived at behind his back without giving him a chance of having his say, is an elementary principle of natural justice. The maxim "audi alteram partem" is a well-known maxim of law. The question is whether while acting under section 14 of the Lucknow University Act the Chancellor was bound to conform to this rule. We find nothing in the section itself or in the statute framed thereunder on the basis of which it can be argued that the Chancellor could disregard this rule. The statute framed with reference to section 13 contemplates there being parties to the questions which are to be decided by the Chancellor under the section. It empowers the Chancellor to call for documents from the parties if he finds necessary. If he can call documents from the parties there is no reason why he should not hear the parties if they want to be heard. In the present case the Chancellor actually gave a hearing to the Respondents nos. 1 and 2. We also took into consideration not only the representations made by the Respondent no. 3 but also the facts brought to his notice on behalf of the University by the Respondent no. 2. If the hearing was being given to those two parties it was in fairness necessary that a hearing should have been given to the petitioner also who was so much interested in the matter. In the Respondent no. 3, if not more. In fact, he could

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claim to be interested in the question referred to the Chancellor as a person *ex parte* because he had already been appointed to the post of Professor of Law and was holding it while the Respondent no. 1 was only a candidate for the post who had not even been recommended for the post.

We are unable to appreciate the argument that the Chancellor had any amount of difficulty in finding out whether the petitioner was a party interested in the question. A copy of the representation made by the Respondent no. 1 to the Chancellor has been produced before us. But in the circumstances it can safely be presumed that it had been maintained in that representation that the Selection Committee whose constitution was being challenged had recommended the petitioner and that accepting that recommendation the Executive Council had appointed the petitioner as Professor of Law. No person could in the circumstances have any difficulty in finding out that the petitioner was a person really interested in the question which the Chancellor had to decide and the dilemma of the Chancellor was going to affect the petitioner directly. For effectively dealing with the question referred to the Chancellor, therefore, in our opinion, it was not only fair but necessary that the petitioner should have been heard. In not giving the petitioner an opportunity to have his argument given a decision which affected him so adversely that it deprived him of a post in which he had been appointed the Chancellor clearly violated one of the fundamental principles of natural justice.

It may be that in certain circumstances in connection with some of the questions which may be referred to the Chancellor for decision under section 28 he may not find it easy to find out all the persons interested whom he should hear or the number of such persons may be large. The difficulties are, however, in no way great

available. Moreover, no question of unimportant details arises, for our opinions, article a product of a quasi-judicial body to govern one of those fundamental rules which form the foundation of its political character and give it its respect and confidence of the persons whose affairs are dealt with by the body. Who are the persons interested in a particular question naturally depend on the question itself, the circumstances in which it arises and the nature of the effect of its decision. Before taking up the questions referred to have the Chancellor is expected to examine its implications and to ascertain who are the persons whose rights and interests are likely to be affected by it. If the number of such persons is large that should not matter. An opportunity should be given to every one so long as he or she is not a party, and all persons who want to be heard should be given a hearing. Only then can the decision of the Chancellor be held to be just and wise.

We now refer to the connection to a decision of the Andrus Federal High Court in *Chancellor Pashenko v. Suffolk University*. Pashenko by its Registrar (1) in that case the election of a member of the Senate of the Andrus University was in operation and a reference had been made to the Chancellor under section 17 of the Andrus University Act which provided:

Three, as determined by needed, if any question arises whether a person has been duly elected or nominated as or is entitled to be a member of an authority of the University, the question shall be referred to the Chancellors whose decision shall be final.

The unsuccessful candidate at the election had referred the question to the Chancellor who had decided it with no more a chance of hearing to the successful candidate.

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date. The nominal candidate, therefore, challenged the decision of the Chancellor by a writ petition and urged that the decision was liable to be quashed because it infringed a rule of natural justice. A writ of certiorari was issued and it was observed—

"It is of the essence of justice and equity that a person should not be deprived of his property in the rights of privileges without being given an opportunity to show cause against it. The Chief Minister, though not a Judge in the strict sense of the term but constrained only as administrative authority, exercise quasi-judicial functions in deciding whether a person was duly elected or not. Therefore, he should observe the judicial process. Even as administrative authority, when he acts in a quasi-judicial capacity, has to conform to the norms of judicial procedure. It is thus clear that in the name of substantial justice, a person to be affected by the decision, should be enabled to know the case he has to meet and place his views. The maxim "audi alteram partem" means that no person should be condemned without being heard. In other words, any person to be affected must be afforded an opportunity to know the case he has to meet and to put his views point before the authority deciding the dispute."

It was also stated that when the report of the university's independence of the Selection Committee was raised before the Executive Council at the time it was considering the recommendations of the Committee, the Vice-Chancellor was of opinion that the Selection Committee had been duly constituted.

Mr. Gervais, discussed the objections raised. There was the usual claim by the Vice-Chancellor on behalf of the University, even in reply to the representative made by the Rectorate, as 7 by the Chancellor. At the



the question decided by the Chancellor was whether the Selection Committee was duly constituted. The petitioner was not directly interested in that question. He cannot, therefore, claim to be a person aggrieved by that decision and cannot on that account get it quashed by a writ of certiorari. It is pointed out that the petitioner can claim to be interested only in one of the consequences that followed from the decision of the Chancellor but that cannot give him a right to impugn the decision itself.

This raises an interesting question as to who can be considered to be an aggrieved person entitled to claim a writ of certiorari. *Jainas, L.J.*, in an *obiter dictum* in *re, Indubhaiji (2)* attempted a definition of a "person aggrieved" by saying—

"But the words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something.

In *Ex parte Official Receiver*, in *re David Brown and Co (2)* Lord Evers, M. R., accepted the definition but qualified the word 'something' by saying that "it must be something for which he had a right to ask."

In *Selling Corporation v. Jinas (2)* Lord Pennycuik expressed the view that the expression 'a person aggrieved' means—

"Some legal grievance, for example a deprivation of something, an adverse effect on the title to something and so on."

(1) L.R. (1959) 11 Q.B. 440. (2) L.R. (1959) 10 Q.B. 174.  
(3) [1964] 2 W.L.R. 104.



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The Chancellor then, in no many words, declared the appointment of the petitioner as Professor of Law null and void. This part of his decision affirmed the petitioner's death and result. It had the effect of depriving him of a post which the petitioner claimed to be entitled to hold. We are, therefore, unable to accept the contention that the petitioner was not an approved person so as to be entitled to get the decision of the Chancellor quashed by a writ of *certiorari*.

Two other questions were raised on behalf of the Respondent as ? One was that the petitioner had been appointed only on probation and had, therefore, no right to the post of Professor of Law. At any time during the period of probation the University could terminate his services. As he had no right to continue in the post he could not maintain the petition. The other was that there were provisions in the Ladang University Act and the charter framed thereunder under which if an employee of the University had any grievance against it he could get it referred to arbitration. The proper remedy for the petitioner if he was dissatisfied with the termination of his appointment was to have the matter referred to arbitration.

These contentions are not quite tenable. The petitioner was actually appointed on probation for two years. His services had, however, not been terminated on the ground that his work did not prove satisfactory or that the University did not consider it proper to retain him in service. His appointment has only been cancelled because it has been declared null and void by the Chancellor. When the validity of the appointment itself was being put in question the fact that the appointment was on probation for a period of two years and the period has not expired cannot be given any important place.



The petitioner is not against the University. He is really aggrieved against the order of the Chancellor who has declared his appointment as null and void. There is, therefore, no question of his violating the provisions in the University Act as the Statute relating to arbitrations.

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There is, therefore, considerable force in the contention of the petitioner that the decision of the Chancellor dated the 23rd May, 1913, so far as it relates to him and his appointment as a Professor of Law is vitiated by the fact that it violated a fundamental principle of natural justice inasmuch as though it directly affected the petitioner it was given without giving him an opportunity of being heard. The decision is, therefore, liable to be quashed and the petitioner is entitled to require the Respondent no. 2 (Vice-Chancellor) from giving effect to it.

As a natural consequence of the decision, dated the 23rd May, 1913, being quashed the reference made to the Chancellor will become pending before him again and he will have to decide it in accordance with law, after giving the petitioner an opportunity to be heard. At the time of such fresh hearing it will be open to the petitioner to oppose the representations made by the Respondent no. 2 on merits and also to urge that the reference to the Chancellor was not properly made. We have now heard the parties on these points and express no opinion on the same.

It was, in the end, urged by the learned Advocate-General on behalf of the Chancellor that there is bound to be some time lag between the quashing of the decision of the Chancellor and the reference being disposed of again. He urged that for this intervening period when the Court should pass some order directing the status quo ante to continue or let the Chancellor pass

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Respondent,  
V. S. B. Goss,  
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such interim orders. We are unable to accede to this request. We do not know what the status quo now is in this matter. We are not very sure whether the Chancellor has any powers, under section 16 or any interim orders, or directions. The question has not been debated before us so enable us to say anything on the point. We say ourselves not as a principle to issue any directions as to how the affairs are to be managed during this interim period. The only thing we can do is to leave the matter to take an ordinary natural course. The legal consequence of the order quashing the decision of the Chancellor must, naturally follow and cannot, in our opinion, be suspended or prevented.

The petition in the writ succeeds to the extent that the decision of the Chancellor (Respondent no. 1), dated the 13rd May, 1956, is quashed by a writ of certiorari and the Respondent no. 2 (Vice-Chancellor) is directed not to give effect to that decision. The Respondent no. 1 must deal with the reformer made to him in accordance with law. The petitioner will have his costs as respect of the petition from the respondents.

*Application partly allowed*

## CIVIL MISCELLANEOUS

*Before Mr. Justice Oak*

**KALAE and OTHERS (Appellants)**

vs.  
**THE STATE**

**STATE vs. OTHERS (Opposite-Parties)**

**Land Acquisitions for the Union—Non-fulfillment by U. S. Government—Delegation of jurisdiction—Validity of acquisition for United States—Act, 1894, as amended—Conditions of Sale, 1895, Art. 20477.**

**First position—Maladministration and its effect—Delegating authority of jurisdiction—Validity of. Constitution of 1895, Art. 204.**

Under Art. 20477 of the Constitution, the power of delegating to a State Government part of the functions of the State Executive vests in and is exercisable by the President. A delegation by the Government of India purporting to be a delegation by the Central Government of its power under or for the purpose of the Land Acquisition Act is, therefore, invalid and ineffective.

The acquisition under the alleged delegation made by the U. S. Government for acquiring land for the purpose of the Union N. E. R. Headquarters Scheme is, therefore, void as law and liable to be quashed.

A single person challenging different acquisitions regarding two different and separate parcels of land on both of which all the persons are not interested is not the maladministration and consequently. The ground may however be a valid one for challenging the validity of the acquisition as may be necessary to remove the defect.

The petitioner under Art. 226 of the Constitution, must, it is no doubt true have a substantial interest in the subject-matter of the writ. Such interest, however, is deemed to exist where the petitioner has a prima facie right and is engaged for the same.

**State of Bombay v. Federation for Work (1) and Mohan and Sons (2) v. State of Madras (2) dismissed.**

(1) 200 I.C.R. 111.

(2) A.I.R. 1958 Mad. 107.

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Civil Miscellaneous Work no. 1694 of 1954

The facts appear in the judgment.

*S. C. Dhari, for the applicants.*

*Lakshmi Sreen for the opposite parties.*

Q14. J.—By this petition under Article 226 of the Constitution certain Government notifications issued under the Land Acquisition Act are being challenged. The State of Uttar Pradesh issued a series of notifications to the effect that, certain land was to be acquired for construction of rail quarters in connection with the North Eastern Railway Headquarters Scheme. The first notification, dated the 2nd March, 1955, was under section 4 of the Land Acquisition Act (hereinafter referred to as the Act), and related to an area of 115.78 acres. The second notification, dated the 16th April, 1955 related to the same area of 115.78 acres, and was issued under section 5 of the Act. The third notification related to a small area of 2 acres, and was issued under section 4 of the Act. There are 60 petitioners. Their claim is that they are tenants of the land covered by the said notifications, and their land is being illegally acquired by the State Government. The petitioners have, therefore, prayed for a writ of mandamus commanding the opposite parties not to proceed with these land acquisition proceedings.

A counter-affidavit has been filed on behalf of the opposite parties. They have maintained that the land acquisition proceedings are valid.

Mr. Lakshmi Sreen appearing for the State raised three preliminary objections as regards the maintainability of the writ petition. His first contention is that a single petition by 60 claimants with respect to separate Government notifications is not maintainable. There is here in this instance. In *Moravadas v. State of U. P.* (1), it was held that, a joint petition con-

(1) A.I.R. 1956 20, 201.

making a petition for maintenance cannot be filed on behalf of several petitioners. The three impugned Government regulations cover two separate pieces of land. Two regulations relate to an area of 113.78 acres while the third regulation relates to an area of 7 acres. Again, there are as many as 40 petitioners. All of them are not interested in both the parcels of land. According to the affidavit of Dhanraj prasad ji petitioners nos. 3 to 15 are tenants in the land with an area of 113.78 acres. Petitioners nos. 34, 37, 44, 45 and 46 to 49 are tenants of land measuring 7 acres. The petition is defective on account of multiplicity. There is, however, reason to believe that 16 petitioners are interested in challenging the acquisition proceedings relating to the area of 113.78 acres. I invited Mr. J. C. Khare appearing for the petitioners to correct option. He decided to join the petition with respect to the area of 113.78 acres. I shall, therefore, confine further discussion in this case to this area of 113.78 acres.

Mr. Lakshmi Naray's second objection is that, the petitioners have not established a subsisting interest in the property in dispute. In Schedule no. 1 attached to the petition the petitioners have described how they are interested in different portions of the total area of 113.78 acres. According to the petition, 16 petitioners are tenants of this land. In paragraph 7 of the common affidavit it is stated:

"There is a dispute between the Pipsrich Sugar Mills and the petitioners nos. 16 to 33 in respect of the water rights. It is the Pipsrich Sugar Mills which is recorded as owner of the place. No doubt the Assistant Collector, First Class, Guntakur, had passed an order in favour of the petitioners but there is a civil litigation pending between

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the said Mills and the petitioners in respect of these rights."

Since the Revenue Court has recognized the petitioners' claim as tenants, they are *prima facie* tenants of the land in dispute. The opposite-parties are hardly concerned with the litigation between the petitioners and the Sugar Mills. The petitioners are not required to reveal the results of that litigation. The petitioners have established a *prima facie* interest in the property in dispute. They are, therefore, entitled to file this writ petition.

The third objection against the maintainability of the petition is that, the authorities have already taken possession under the impugned notifications. In paragraph 7 of the counter-affidavit it has been stated that possession was taken over on the 1st July, 1959. The writ petition was moved on the 12th July, 1959. Thus according to the counter-affidavit, the authorities took possession ten days before the writ petition was moved. This allegation has been challenged in the reply-affidavit. In paragraph 17 of the reply-affidavit it is stated that, there might be some paper transaction about delivery of possession. But the petitioners have continued to be in actual physical possession. In view of the conflicting statements in the rival affidavits, it is difficult to say whether possession at the moment is with the petitioners or with the opposite-parties. Since there is doubt about actual possession, one cannot give much weight to this preliminary objection raised on behalf of the opposite-parties. In paragraph 4 of the counter-affidavit it is stated that, petitioner no. 34 is not a tenant in the land covering 2 acres. Since the petition with respect to this area of 2 acres is being dismissed, it is unnecessary to discuss the question whether petitioner no. 34 is interested in this area of 2 acres.

Now I proceed to discuss the merits of the writ process. The main contention of Mr. S. C. Khere is that, the acquisition proceedings are for a Union purpose. It was not open to the State Government to initiate the acquisition proceedings. The impugned notification declares that land is being acquired for construction of rail quarters in connection with the North-Southern Railway Headquarters Scheme. This is a Union purpose. But it has been urged for the opposite parties that, the State Government has authority to acquire land for the benefit of the Union.

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JUDGE  
SAID:

Section 4 of the Act provides for publication of a preliminary notification. Sub-section (1) of section 4 reads:

"Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice . . . ."

The expression "appropriate Government" has been defined in clause (a) of section 3 of the Act. The expression "appropriate Government" means in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purpose, the State Government. We have seen that in the instant case it is alleged that land is being acquired for a purpose of the Union. So in the present case "appropriate Government" means the Central Government. So it was the Central Government which could take action under article 4 of the Act for acquiring land. Action has, however, been taken by the State Government, and not by the Union Government.

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S. C. Khare  
v. State of  
Bombay

It has been urged for the opposite parties that, the State Government has been empowered by the Central Government to take action under the Act whenever necessary. Reference is placed upon a notification, dated the 24th March, 1950, issued by the Government of India. Annexure I to the counter-affidavit is a copy of that notification, dated 24th March, 1950 (hereafter referred to as 1950 notification). That notification runs thus:

In exercise of the powers conferred by clause (1) of Article 258 of the Constitution the Central Government hereby entrusts to the Governments of Bombay, Uttar Pradesh . . . the functions of the Central Government under the Land Acquisition Act . . . in relation to acquisition of land for the purposes of the Union within their respective territories."

According to this notification, the Central Government entrusted the U. P. Government to initiate acquisition proceedings on behalf of the Central Government.

Mr S. C. Khare contended that the 1950 notification is invalid. That notification purports to have been issued under Article 258 of the Constitution. Clause (1) of Article 258 of the Constitution is in these terms:

"Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends."

Under this provision the President may delegate his functions to a State Government. Mr Khare pointed out that the 1950 notification purports to be an order by the Central Government. That notification does not refer to the President of India at all. Mr Khare,



therefore urged that, that is not a valid notification under Article 245(1) of the Constitution.

Mr. Lakshmi Sreen contended that although the notification purports to have been issued by the Central Government, it should be taken as delegated to the President. Reference was placed upon *The State of Bombay v. Purnabhai Jog Kulk (1)*. In that case the impugned notification ran thus:

Whereas the Government of Bombay is empowered with respect to the person known as J. N.

that with a view to preventing him from acting in a manner prejudicial to the maintenance of public order it is necessary to make the following order. Now, therefore, the Government of Bombay is pleased to direct that the said J. N. be detained.

By order of the Governor of Bombay.

(Sd) V. T. D.,

Secretary to the Government of Bombay,

Home Department.

The High Court of Bombay held that the order was defective, as it was not "expressed to be in the name of the Governor" within the meaning of Article 166(1) and was not accordingly protected by Article 166(2). That decision was reversed by the Supreme Court in appeal. Their Lordships held in appeal that the order was not defective merely because it stated that the Government of Bombay was pleased and that the Government of Bombay was pleased to direct that J. N. be detained. The order was really one expressed to be taken in the name of the Governor of Bombay within Article 166.

The impugned order in *Mask's case (2)* was issued under the Preventive Detention Act, 1950. According to

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section 3 of that Act, action for dissolution could be taken if the State Government was satisfied as regards certain matters. The initial condition was the satisfaction of the State Government. The impugned order expressly mentioned that the Government of Bombay was satisfied about the necessity of dissolving J. A. So it seems that order complied with the requirements of section 3 of the Preventive Detention Act, 1950. Further, it was expressly mentioned that the impugned order was being issued under direction of the Governor of Bombay. There was, therefore, substantial compliance with Article 166 of the Constitution. In the present case the impugned notification of 1952 does not refer to the President of India at all. In *Muhammad Riaz Jabeer v. Government of India* (1) the Government order was expressed to be order of the Government, Ministry of Local Self-Government. The order was signed by the Secretary to the Government. It was held that the order was validly issued. According to rule 37 of the District Municipalities Act, no order had to be issued by the Governor-in-Council. On the other hand, according to section 48 of the Government of India Act, orders had to be expressed to made by the Government of the Province and authenticated as prescribed. The impugned order in that case was issued in the name of the Government. It was authenticated by the Secretary to Government. That appears to be in accordance with the directions issued by the Governor in that respect. So it was held that the order was properly issued.

We have to consider whether the 1952 notification can be considered to be an order by the President of India, although the notification purports to have been issued by the Central Government. Under Article 23 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised

by him either directly or through officers subordinate to him in accordance with the Constitution. According to clause (1) of Article 77 of the Constitution, all executive action of the Government of India shall be expressed to be taken in the name of the President. Under this Article, even if action is taken by the Central Government, the relevant order ought to be issued in the name of the President. I do not find in the Constitution the converse proposition. There is no provision in the Constitution that orders to be issued by the President might be issued in the name of the Central Government. We have seen that under clause (3) of Article 54 of the Constitution, it is the President who can delegate his functions to the State Government. There is nothing in the Constitution to suggest that the Central Government may act on behalf of the President for purposes of Article 54. It is true that, under Article 75 of the Constitution, the President is aided by a Council of Ministers. It was open to the Council of Ministers to advise the President for issuing an order under Article 54 of the Constitution. But ultimately the order had to be issued by the President, or in the name of the President. In the instant case the 1952 notification was issued by the Central Government, and not by the President. I agree with Mr. Khan that the notification, dated 25th March, 1952, is not a valid notification delegating powers under Article 54 of the Constitution. The 1952 notification did not empower the State Government to take action under the Act on behalf of the Union Government. In the absence of any such delegation of powers, action in the instant case ought to have been taken by the appropriate Government (the Central Government). It was not open to the State Government to issue notifications under sections 4 and 5 of the Act on behalf of the Union Government. The two notifications, dated the 2nd

and  
the 25th  
March  
1952, are  
invalid.

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March, 1909 and the 11th April, 1909 with reference to the area of 11378 acres are invalid. The applicants have acted in disposing the petitioners on the strength of these notifications. The petitioners are entitled to be restored to possession, in case the notices, now have already disposed the petitioners. Since the petition partly succeeds the parties may be directed to bear their own costs.

The petition is partly allowed. The opposite parties are directed not to give effect to the two notifications, dated the 11th March, 1909 and the 11th April, 1909 issued under sections 4, 8 and 17 of the Act with respect to the area of 11378 acres (Annexures A and B in the petition). The opposite parties are directed to restore the petitioners nos. 1 to 52 to possession over this area of 11378 acres, in case the petitioners have been dispossessed by this time. The petition is dismissed as regards the other area of 2 acres. Parties shall bear their own costs.

*Petition partly allowed.*

## CIVIL REVISION

[RECAPITULATION]

*Before Mr. Justice Lal*HAPPY VALLEY TEA COMPANY and ASSOCIATES  
(Appellants)

v

JESSE  
LAL

DARSHAN LAL (Opposite-party)

**Substitution of Legal representative of the sole plaintiff—**  
Application for, filed but no order of the court; effect of the order given in the name of the deceased plaintiff and of the amended decree—how, whether may be deemed as still pending—Code of Civil Procedure (Act V of 1908), s. 102, O. XX + 4 and O. XXV, r. 2.

On the death of the sole plaintiff, as the term of a party made faulty, an application for bringing on record his legal representative was duly filed but no order thereon was passed by the Court. The suit was later decreed in terms of a consent decree which was signed and certified by the proposed legal representative. The decree was, however, annulled during the execution proceedings and an application for the annulment of the decree and decree was made and allowed but the amount decreed was not actually ascertained and this was allowed through a subsequent application. In no objection to the annulment of the amended decree.

Held, (1) that, the original decree being in the name or favour of a dead person from a validity and the amended decree or secondary decree could be no better than as different from the same.

(2) that, the intervention application having been duly filed within the prescribed time, the suit could not abate and must, therefore, be deemed to be pending from the date of date of the application for substitution and should accordingly proceed further in regular course according to law.

*Darshan Lal Agents v. Happy Valley Tea Company, Court of (1) Appeal on and Grant of (2) Decree Dec (3) Appeal.*

Civil Revision no. 1919 of 1955, from an order of M. C. ANANDAN, (a Additional Civil Judge, District Dec. dated 24th August, 1955)

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Hare  
Nagar  
Vs  
Gowari  
+  
Jagannath Lal  
—

The facts appear in the judgment.

K. M. Tripathi and Jasbir Kumar for the applicants.  
Jagannath Lal, for the opposite party.

LEM. J. —This civil petition filed by the defendants arises out of somewhat peculiar circumstances as will be revealed by the facts given below.

Lala Shoo Prasad brought suit no. 484 of 1937 in *Aorta* of the joint Hindu family against the present applicants in the court of Civil Judge, Dehra Dun, for recovery of Rs.12,412-4-4. During the pendency of the suit Lala Shoo Prasad died and an application for substitution of his legal representatives was made on 1st April, 1949, praying that the name of Lala Durbhan Lal be substituted in his place as *Aorta* of the joint Hindu family. Somewhat no orders were passed on this application and the suit continued in the name of the deceased Lala Shoo Prasad. The parties entered into a compromise and filed it in Court on 11th August, 1949. This was duly verified by the parties and it may be noted that on behalf of the plaintiff Lala Durbhan Lal executed it. The compromise was recorded and a decree followed granting instalments to the defendants. Some instalments were also paid in 1950 and 1951 and the total amount then paid came to Rs.7,852.

When the decree was directed an application for amendment of the decree and the plaint was made on behalf of Lala Durbhan Lal on 2nd May, 1952. The prayer was that by some oversight his name had not been substituted in place of deceased Lala Shoo Prasad and no orders had been passed on the substitution application, dated 1st April, 1949, and as necessary amendments in the plaint and the decree may be made. Notices of this application were issued but it appears that the judgment-debtors filed no objections and ultimately an order for substitution of the name of Lala

Darshan Lal in place of Lala Shro Prasad, was made and the decree was ordered to be amended by an order, dated 2nd of August, 1932.

In spite of the order of 2nd of August, 1932, the amendment was not incorporated in the decree or plaint or register no. 1 or connected papers and the name of Lala Darshan Lal was not substituted. The decree-holder sought execution and the decree was transferred to Daryajung under section 48, Civil Procedure Code. In this case the judgment-debtor filed an objection under section 47 mainly on the ground that the decree sought to be executed was a nullity. The objection was accepted by the learned Subordinate Judge who allowed the objections under his order, dated 1st June, 1934. The decree-holder thereafter filed an appeal in the Calcutta High Court.

After the objection was allowed in Daryajung the decree-holder made a second application to the Civil Judge, Dacca Division, on 15th July, 1934, for amendment of the decree. Again reasons were issued to the judgment-debtors who did not put in appearance. There was another order for correction of the decree and plaint and the connected papers on 14th September, 1934. It seems that at the appeal in the Calcutta High Court was pending nothing material happened thereafter. After the decree-holder's appeal in the Calcutta High Court was dismissed on 18th December, 1937, with the following observations:

'It may be that an application for substitution having been made at proper time, the suit would not stale and even years later the court might pass an order granting the substitution and then deal with and decree or dismiss the suit.'

The decree holder made an execution application on 9th May, 1938, praying (i) a decree be passed in favour of

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the plaintiff against the defendants in terms of the order pronounced, dated 14th August, 1948, after they notice to defendants and in the alternative (7) the suit may be treated as pending and be proceeded with on merits and a decree be passed in terms of the reliefs claimed. The plaintiff further prayed that as a sum of Rs 7,500 had been paid during the pendency of the suit a decree in that extent may be given and a decree be passed for the balance. A notice of this application was served and the respondent denies contention. The learned Civil Judge, Dabra Dura, in view of the observations made by the Calcutta High Court came to the conclusion that the suit should be treated as be pending from the stage Lala Shree Prasad died and as orders for substitution had already been passed and amendment of the plaint had been ordered the case should be treated as with. It is against this order that the present revision has been filed.

It has been contended by the learned counsel for the applicants that the learned Civil Judge had no jurisdiction to entertain the application over the decree passed in favour of the plaintiff is found to be a nullity and has also been held to be a nullity by the Calcutta High Court. His further contention is that the case could not be treated as be pending and the plaintiff should seek his any other remedy if it is open to him.

I have heard learned counsel for the parties. The facts stated earlier will go to show that the plaintiff was never at fault and remember the death of Lala Shree Prasad an application was made for substitution of Lala Dardash Lal as the legal representative and karta of the joint Hindu family which was represented by the deceased Lala Shree Prasad. This application was made within about eight days of the death of Lala Shree Prasad. What the court should have done after this application was that after notice to the defendants or his counsel,



which was given on 1st April an order for substitution of Lulu Davidson Ltd in place of Lulu Sharp Pressed should have been passed. The April order sheet goes to show that the defendants' counsel was informed and 1st April was fixed for the disposal of that application, but no orders were passed and it seems that at that time was waiting disposal of an appeal dates were being fixed in the case for receiving the results of that appeal by that date fixed in the case was 9th September, 1945, and it was before that date that a counterclaim was filed on 11th August, 1945. The court or the ministerial staff did not look into the file to find whether orders had or had not been passed for substitution and the counterclaim having been filed on behalf of the plaintiff of Lulu Davidson Ltd nobody seemed to find out the order for substitution. This was apparently a mistake of the court and the plaintiff was not at fault at any stage of the case.

There was a further mistake on the part of the officials and it was this, when an order for substitution had been passed on 2nd May, 1945, the ministerial staff did not make necessary corrections or amendments in the plans, figures, register no. 1 or other connected papers and in spite of the order the decree stood as it was. I may not be misinterpreted to say that even though the decree was a nullity yet still an amendment could have been made. But when the plaintiff was vigilant and taking every step at every stage and the mistake was committed either by the court or by its ministerial staff the amendment should have been made. The whole matter came to light or became prominent when the judgment-debtor filed an objection under section 47, Civil Procedure Code, in Boringling court and the decreeholder lost the objection not only from the court but from Calcutta High Court also.

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The questions that arise for consideration in this case are: (a) whether the decree, which was passed on the basis of the compromise without bringing the legal representatives of deceased Lala Shree Prasad on record, could be corrected by incorporating the order of amendment passed in 1952 and (b) if it cannot be done whether the suit should be treated as being pending.

So far as the first point goes, neither it is very clear that the decree that was passed on the basis of the compromise in this case was a nullity because it had been passed in favour of Lala Shree Prasad deceased. It is true that an application for substitution had been filed in this case on 1st April, 1949, about two weeks after the death of Lala Shree Prasad, but by some mistake or omission no orders for substitution were passed. Even the mistake on the part of the court in not passing an order of substitution could not give the plaintiff a right to get such a decree amended. As the decree when passed was a nullity any order of amendment passed subsequent to the passing of the decree could not make it valid nor could it give the plaintiff a right to enforce the decreed amount under such a decree. The decision of the Calcutta High Court given at this very case has disallowed this point and the case is reported in *Desham Lal Agarwala v. Happy Valley Tea Company Ltd.* (1). At page 612 it has been observed that:

"If a decree is passed without jurisdiction, a later order amending it, cannot remove that lack of jurisdiction and what was a nullity before the amendment does not become a valid thing after the amendment."

It can hardly be argued that the decree, as was passed without substitution, on the basis of the compromise

(1) A.I.R. 1952 Cal. 504.

was a valid decree and consequently the amendment of such a decree was a futile attempt. In spite of the receipt made by the plaintiff in 1952 and 1955 and in spite of the order of the court for amendment of the decree and the corrected papers, the decree could not be treated as, or be a valid one. It was in fact a decree which stood in the name of a dead person. Late Shree Prasad and the decree having been passed in his favour as is shown of the joint Hindu family represented by Late Shree Prasad deceased was an invalid decree. There was no living person present before the Court in whose favour a decree could be passed. The prayer for amendment of the decree or the prayer for its correction on the basis of an earlier order of amendment cannot, therefore, be granted to the plaintiff.

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The only other question which requires consideration is whether under the circumstances of the case the suit should be treated to be pending. The facts will disclose that Late Shree Prasad died on 14th March, 1949, and an application for substitution had been given on 1st April, 1949, but in spite of notice and in spite of there being no objection no orders were passed on it. The case was thereafter compromised and a compromise decree was passed on 11th August, 1949 without substitution of the legal representatives of the deceased plaintiff. The decree stood in the name of the deceased. This decree is a nullity and so the suit should be treated to be pending from the stage the substitution application was made. Obviously when the substitution application had been made within time for bringing the legal representatives there could be no objection. The plaintiff had also to do nothing and what was to be done was to be done by the court. If the suit could not have abated after making the substitution application the proceeding which took place

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where the making of the substitution applications with-out an order of substitution are a nullity. That mean-ings being done after 1st April 1948, without sub-stituting Lala Durshan Das as legal representative and none of the party Shri Krishna Das was all a nullity and so all the proceedings subsequent to the substitution applications have no effect on the status of the parties. The suit must be treated to be pending at the stage on which the applications for substitution was made. In other words the suit must be treated to be pending now.

The learned counsel for the applicants has further contended that once a decree was passed and the proceedings were closed the suit should not be treated to be pending, but the respondent cannot be accepted by citing the defendant's *judgment-debitus* status here, both ways. That cannot negt the decree so far a nullity and again in the same case that the suit should not be treated to be pending even though further proceedings were impossible. There is no direct authority on the point, but a similar may be made to the judgment in *Qutub Ali v. Sharda Devi* (1) in which a Division Bench under similar circumstances has on slightly different facts expressed the view that the case should be treated to be pending. It was a case in which the wife, defen-dant, was dead on the date of the decree and a decree incapable of execution had been passed. The Bench thought that the case should be reopened and passed, but cannot after bringing the legal representatives of the deceased defendant on record. Obviously the order passed by the learned Civil Judge could be the only correct order in the case. The suit must be treated to be pending from the stage, not from the date of the death of Lala Shri Prasad, as observed by the learned Civil Judge, but from the date on which the sub-sti-tution application was made, that is 1st April, 1948. The



## APPELLATE CIVIL

*Before the Honourable G. H. Monahan, Chief Justice,  
and Mr. Justice Dwyer*

HUEY CHANG and ANOTHER (Appellants)

THE  
JURY

v.

STATE TRANSPORT AUTHORITY TRIBUNAL  
and OTHERS (Respondents)

*Principles governing conduct of judicial and quasi-judicial proceedings—Exercise of a discretion, exercise of power—Law applicable—Motor Vehicle Act, 1940, s. 44(2)—Huey Chang and another v. State Transport Authority Tribunal and others (Respondents).*

By s. 44(2) Motor Vehicle Act: "No person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed or be or act as a member of a board or Regional Transport Authority."

When one of the members of the Regional Transport Authority was refused to a person on whom there is a large financial interest was granted the State Transport Authority Tribunal exercised the power on the ground that grant of such a person would shake public confidence. This was having been upheld in a writ petition against the order of the State Transport Authority Tribunal, on a special appeal came also on the ground that the Tribunal had implicitly evaded their jurisdiction, say disqualification from membership of a Regional Transport Authority other than the disqualification then contained in s. 44(2).

Here, then, the general principle governing the conduct of judicial and quasi-judicial proceedings is the effect of this; no man shall be a judge in his own cause, nor that justice should not only be done but manifestly and undoubtedly seen to be done and that if a member of a judicial body is in such a position that a bias must be assumed to exist against him, he ought not to take part in the decision or at least the tribunal will usually apply to the proceedings under the Motor Vehicle Act. The provision of s. 44(2) of the Motor Vehicle Act, do not limit the grounds on which a person may be disqualified. Ground mentioned in the disqualification provisions is to induce to show which even under the general law. The law is to be applied in such cases in the exercise of a reasonable suspicion of bias, which being present in the mind of the person was necessarily granted. The appeal was accordingly dismissed.

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Special Appeal no. 33 of 1958, from a decision of B. K. Jyoti, J., dated 34th December, 1948, in Civil Miscellaneous Writ no. 3837 of 1948.

The facts appear in the judgment.

*R. & Puriel and C. S. P. Singh, for the appellants.*

The judgment of the Court was delivered by—

**MAHARAJ, C. J.**—This is an appeal from an order of Mr. Justice Jyoti dated the 34th December, 1948, granting a petition under Article 226 of the Constitution.

The relevant facts are these—On the 30th June, 1937, the Regional Transport Authority, Rampur Region, issued applications for the grant of a single permit on the Jaunpur-Canocha route. In response to this invitation a number of applications were received including a joint application from the appellants who are two brothers. The applications were thereafter published in the Government gazette and certain objections were received. The matter came before the Regional Transport Authority on the 18th/19th January, 1938, and by a resolution passed at that meeting the Regional Transport Authority sanctioned the grant of a single carriage permit for a term of three years to the appellants who were, in their opinion, "the best claimants", and that either a permit was issued accordingly.

Against this order of the Regional Transport Authority three appeals were filed before the State Transport Authority Tribunal, the appellants being Respondents nos. 3, 4 and 5, namely, Sri Bhagwan Das Gupta, Sri Ram Gupta Rathi and Sri Rathi Mohan. On the 6th February, 1948, the State Transport Authority Tribunal passed an interim order on these appeals directing the Regional Transport Authority to give an intimation for granting a permit to the appellants, and in the same

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time it empowered that Authority, to help the parties agree in order to be able to give its reasons in detail. The Regional Transport Authority accordingly met on the 10th April, 1958, and after hearing the parties passed the following resolution:

"R.T.A. has heard Bhagwan Das Gupta through counsel, Ram Gopal in person and Messrs. Harkum Choudhri Ram Tewari through their counsel. The reasons for refusing permits to the last two have as required by section 45(7) of Motor Vehicles Act, 1939, already been given in this Authority's Resolution no. 15792, dated January 14/7/1958, in view of my busker licence on the route. As for the comparative merits of the three claimants they considering all facts the R.T.A. comes to the view that regard being had to the interest of the public generally Messrs. Harkum Choudhri and Ram Tewari have the best claim."

The State Transport Authority Tribunal then fixed the 25th October, 1958, for the further hearing of the appeals. On the day preceding the date so fixed, namely the 24th October, 1958, the third respondent, Sri Bhagwan Das Gupta filed an affidavit before the Tribunal wherein he alleged that one of the members of the Regional Transport Authority, Sri Balakrishna Shastri, was related to the second appellant before the court, Sri Ram Tewari. This was the first time that such an allegation had been made. On the following day, the 25th October, the State Transport Authority Tribunal by an order of that date dismissed the appeals of Sri Bhagwan Das Gupta and Sri Radha Mohan, but allowed that of the fourth respondent, Sri Ram Gopal Radha. It accordingly directed that the permits which had been granted to the appellants be cancelled and that to him thereof a permit be granted.







We had ourselves, with great respect, trouble to agree with the view taken by SCOTT, J. as to the effect of section 14(2). In our opinion the provision is that sub-section disqualifying persons having an interest in any transport undertaking is intended not as a limitation of the grounds on which a person may be disqualified under the general law but as an additional ground of disqualification. For a person who has an interest in a transport undertaking in any part of India may not be disqualified on the ground all have under the general law from being a member of a Regional Transport Authority in some other part of India. In our opinion the subsection must be strictly construed and we do not think, with all respect to the learned Judge, that there is justification for holding that the disqualification specified in that sub-section was intended by the Legislature to be the only ground of disqualification. We are of opinion therefore that a person may be disqualified from taking part in the disbursement of a Regional Transport Authority on a ground other than the ground mentioned in the subsection.

Now, it is not so difficult that Sir Edmund Stankin is relied on for Sir Ravi Thambi, the second appellant, but it is urged that the essence of the relation ship is sufficient to establish that real likelihood of bias which was laid down by the Court of Appeal in England in *Regina v. Gombosi Justice* (1) as the true ground for disqualification. At most, it is said, there was a mere possibility of bias. The question is to what conclusion bias was ultimately considered by the Supreme Court in *Registars v. State of Andhra Pradesh* (2). In that case SCOTT, J. delivering the judgments of the Court said at page 1178:

The principles governing the "discharge of bias" are well settled and have been judicially affirmed in well settled and then

(1) 114 (1949) 1 Q.B. 413.

(2) A.I.R. 1959 SC 179.

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not (i) no man shall be a judge in his own cause; (ii) justice should not only be done but manifestly and undoubtedly seem to be done. The two maxims yield the result that if a member of a judicial body is "subject to a bias (whether financial or other) in favour of, or against, any party to a dispute, or is in such a position that a bias must be assumed to exist, he ought not to take part in the decision or sit on the tribunal" and that "any direct pecuniary interest, however small, in the subject-matter of enquiry will disqualify a judge, and any interest, though not pecuniary, will have the same effect, if it be sufficiently substantial to create a reasonable suspicion of bias". The said principles are equally applicable to arbitrators, though they are not sworn of justice or judicial officers, who have to sit judicially in deciding the rights of others, i.e. arbitrators who are empowered to discharge quasi-judicial functions."

The test to be applied, therefore, is the existence of a reasonable suspicion of bias, and not the mere inference now laid down in *Regina v. Gombertz Jauzeur* (1), a case which unfortunately appears not to have been brought to the notice of the Supreme Court in *Mugeshwaram's case* (2). Applying this test we consider that Sri Balramchand Sharma was disqualified from participating in the decision of the Regional Transport Authority.

It is however contended that the fact that he did sit is not really material because there were five other members and even if he was biased, that was unlikely to have affected the decision of the other members. For this proposition reliance is placed on *Sarda Prasad v. South Bihar Regional Transport Authority* (3). In

(1) 143 COM. 1, 2 A.L.J. 41. (2) 143 COM. 1, 2 A.L.J. 41. (3) 143 COM. 1, 2 A.L.J. 41.

that even the Regional Transport Authority also consisted of its members, but the Court held that even if one of them be considered to have some bias it could not be concluded that he would have influenced the decision of the majority. Sirs Pannu's case (i) was similar in that that the Regional Court's decision in *Mag. Adhikari's* case (i) and the court took the latter view that the real likelihood, and not the mere possibility, of bias had to be established. This view, we think, is supported by the court's further opinion that the mere fact that one member might be biased would not necessarily be enough to vitiate the decision arrived at by the other members. This decision is therefore distinguishable. In the case before us, we have no information as to the individual opinions of the other members of the Regional Transport Authority, as to the suitability of the appellants as persons to whom a permit should be granted, and we are unable to exclude the possibility that the opinion of Mr Balakrishna Shastri may have been the decisive factor in the decision arrived at by that authority.

In the result, therefore, we are of opinion that the learned Judge was right in holding that there is no ground for interfering with the decision of the State Transport Authority, Terapur and that this appeal must fail. It is accordingly dismissed with costs.

Appeal dismissed.

(17 ALJ 256; 104

12 ALJ 198; 105 ALJ 199.)

(17)  
 1955  
 Appeal  
 Order  
 in  
 State  
 Transport  
 Authority  
 Terapur  
 v. 1

## APPELLATE CRIMINAL.

*Before Mr. Justice Chagal and Mr. Justice Kishish  
Prasad*

KISHAN SAKARUP

1961  
146-15

THAKUR BRIJENDRA SINGH and another

Charge framed by the committing Magistrate—Forum of the Sessions Court for withdrawal or drop the same.—Code of Criminal Procedure, 1938, ss. 206 and 223—Indian Penal Code, 1860, ss. 149, 298, 334 and 335

Provisions of Section of Punjab Panchayats—directions of State Government, village and urban authority.—Code of Criminal Procedure, 1938, s. 139—Indian Penal Code, 1860, s. 10

The Sessions Court has no power to withdraw or drop altogether a charge framed by the committing Magistrate for offence under s. 298 or 335 of the Code of Criminal Procedure, 1938, or to alter or add to the charges so framed.

[One of the accused was committed on a charge under s. 334 and the other under s. 298/335 and the Sessions Court charged him under ss. 334 and 335, respectively.]

*Per s. Adon Kishish (J) delivered*

The Section of a Panch Panchayat is a judge as defined under s. 10 of the Panch Code and it shall retain within the purview of s. 139 of the Code of Criminal Procedure. The provisions of s. 139 is, however, limited only to those who hold such office at the time the complaint is filed, the holding of such office at the time the act complained of was committed being immaterial for the purpose.

*s. 4 Panchayats v. State (J) cited as*

Criminal Appeal no. 31 of 1961, from an order of Ahmad Raza, 1st Assistant Sessions Judge, Agra, dated the 16th October, 1960, in Sessions Trial no. 22 of 1959.

The facts appear in the judgments.

*Saudi Chaudhri for the applicant*

*S. P. Singh Chaudhri, for the respondents*

(1) A.B. 1961 146-15

(2) A.B. 1961 146-15

The Judgment of the Court was delivered by—

194

UNWILL, J.—This is an appeal by the complainant against an order of acquittal.

Lower  
Court

1  
Tribunal  
Sessions  
Court

Briefly stated, the facts which have given rise to this appeal are these: Raghunandan Lal, Respondent no. 2 filed a suit against Kishan Dewraj, appellant, and his wife for recovery of a sum of money before the Nyaya Panchayat of Nagla Singh in the district of Agra. It appears from the order sheet of the Nyaya Panchayat that the suit was dismissed for default of the parties on the 18th September, 1933. The order sheet was signed by Respondent no. 1 who was Sarpanch of the Nyaya Panchayat at that time. It appears that no application for execution of the decree was made before the Nyaya Panchayat by Respondent no. 2 and thereupon on the 24th February, 1936, Respondent no. 1 issued a notice to the complainant and his wife demanding the payment of the decretal amount within three days. The amount not having been deposited within the time allowed a formal decree was prepared on the 10th March, 1936, and was duly signed by Respondent no. 1 as the Sarpanch of the Nyaya Panchayat. In pursuance of the decree, dated the 10th March, 1936, a writ of execution was issued to Respondent no. 2 on the 10th March, 1936, and the application for execution of the decree was transmitted to the court of the Munsif for execution. Subsequently Respondent no. 2 filed a fresh application for execution in the court of the Munsif and thereupon certain property of the judgment-debtor was attached. It is alleged by the complainant-appellant that he came to know about the existence of the decree against him when his property was attached by order of the court of the Munsif. He filed objections before the Munsif in respect of that attachment. The decree-holder, Respondent no. 2 appeared in answer to the summons of the court and

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made a statement that he was not prepared to press the application for execution and that the application may be dismissed. Accordingly on the 19th July, 1958, the execution was struck off and the application for execution was dismissed with costs.

The appellant then filed a complaint on the 18th December, 1958, under sections 218 and 219 Indian Penal Code read with section 199 Indian Penal Code against the two respondents in the court of the Magistrate Ist Class, Agri. He alleged that Respondent no. 1, who was the Sarpanch of the Nyaya Panchayat, Nagla Singha, had got a false suit filed by Respondent no. 2 and a fraudulent decree prepared against him. He further alleged that Respondent no. 2 had applied for execution of the decree knowing that the same was fraudulent. He, therefore, prayed that the two respondents may be prosecuted and punished for the offences under sections 218 and 219 Indian Penal Code.

The learned Magistrate framed a charge under sec. 199 Indian Penal Code against respondent no. 1 and a charge under section 219 read with section 199 Indian Penal Code against Respondent no. 2 and committed both the accused to stand their trial before the court of sessions on the 11th June 1959.

When the case came up for trial before the learned Assistant Sessions Judge, Agri, he struck off the charges framed by the Magistrate and substituted new and fresh charges under sections 218 and 219 Indian Penal Code against Respondent nos. 1 and 2, respectively.

Two objections were made before the learned Sessions Judge on behalf of the accused. The first objection was that the Respondent no. 1 Raghavendran Lal could not be prosecuted under section 219 Indian Penal Code without a complaint of the court concerned. It was urged that the offence with which Raghavendran Lal



was charged having been committed in, or in relation to proceedings in a court, he could not be prosecuted without a complaint in writing of such court, or of some other court to which such court was subordinate. The second objection was that the complaint against Brigadier Singh, Respondent no. 1, under section 118 Indian Penal Code could not be taken cognizance of without the sanction of the State Government. Reliance was sought to be placed on the provisions of section 193 of the Code of Criminal Procedure and it was contended that Brigadier Singh being a 'judge' within the meaning of section 18 of the Indian Penal Code at the time when the offence was committed, he could not be prosecuted without the previous sanction of the State Government.

1961  
AIR 1961  
DELHI 1  
IN  
THE  
SUPREME  
COURT  
OF  
INDIA  
(1961)  
(1961)

Both the objections prevailed with the learned Sessions Judge and he acquitted the two respondents on the finding that the complaint against them could not proceed without the sanction of the appropriate authority. Sri Satish Chandra, learned counsel for the appellants, has urged that the view taken by the learned judge is wholly erroneous. He has pointed out that the learned Assistant Sessions Judge was not justified in dropping the charges under sections 229 and 230/231 Indian Penal Code framed by the Magistrate and substituting in its place charges under two fresh charges. He pointed out that the learned Assistant Sessions Judge had, by framing new charges, completely changed the complexion of the case so as to bring it in the purview of sections 182 and 193 of the Code of Criminal Procedure. He was of opinion that there is considerable force in this contention, the learned judge had no jurisdiction to quash the charges framed by the magistrate. In *Att. Gen. v. Allen Unwin* (1) a Division Bench of this Court held that the sessions court has no

1963  
 Criminal  
 Appeal  
 No. 1  
 AIR 1963  
 SC 1000  
 1963  
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power to withdraw or drop altogether a charge framed by the committing magistrate. It was observed that under section 214 of the Code of Criminal Procedure it was the High Court alone which could quash a charge and that the provisions of sections 226 and 227 did not empower the sessions court to substitute a new charge by dropping the charge already framed by the committing magistrate. All that the Sessions Judge could do was to add to or alter the charge. We respectfully concur with this view and hold that the learned Sessions Judge had erred in striking off the charge framed by the Magistrate.

It was now contended by the learned counsel for the appellant that the Assistant Sessions Judge had gone wrong in holding that the provisions of section 197 of the Code of Criminal Procedure applied to the present case. *Brijendra Singh, Respondent* no. 1, was the Sarpanch of the Nyaya Panchayat of Nagla Singh on the date of the framing of the decree against the appellant. It is common ground that he had ceased to be Sarpanch of the Nyaya Panchayat on the date when the complaint was made in court. The question, therefore, arises whether the sanction for his prosecution was necessary under section 197 of the Code of Criminal Procedure. The learned Assistant Sessions Judge relied on the judgments of a learned single Judge of this Court in *Kapraiah Reddy v. State* (3) 1033 hereinafter referred to as *that case* and we are of opinion that the point which arose there is not relevant for the decision of the present case.

In order to appreciate the objective which was presented before the court below it is necessary to reproduce the provisions of section 197 of the Code of Criminal Procedure.

(3) Criminal Appeal no. 104 of 1959 decided on 19th Mar. 1962



THE  
JUDICIAL  
BAR  
REPORTS  
1966  
VOLUME 1

one of a body of persons, which body of persons is empowered by law to give a judgment.

The next question that arises for consideration is whether in the present case it was obligatory on obtain the permission of the State Government for the prosecution of Respondent no. 1. Section 197 clearly speaks of a judge who is accused of an offence alleged to have been committed by him while acting or purporting to act, in the discharge of his official duty. The plain meaning of the section shows that the person concerned must, at the date of the accusation, have been performing the functions of a judge and that the charge is respect of which he is being prosecuted must relate to the discharge of his official duty. As we have observed above, Respondent no. 1 ceased to be a judge on the day when the accusation was made against him by the parties, so that the provisions of section 197 would not be attracted to the case. The view which we have often held supports from the case of *J. A. Poddar v. State (I)*. That was a case in which the officer concerned was being prosecuted under the provisions of the Prevention of Corruption Act. The question which most bothered their Lordships of the Supreme Court was whether the previous sanction of the State Government was necessary for the prosecution of the accused within the meaning of section 7 of the Prevention of Corruption Act. Reference was made before their Lordships to section 197 of the Code of Criminal Procedure and it was pointed out that the provisions of section 6 of the Act were in pari materia with section 197 of the Criminal Procedure Code. While considering the scope of section 197 of the Code of Criminal Procedure their Lordships pointed out that the view of the High Courts of Calcutta, Bombay, Allahabad and Nagpur was that section 197 of the Code affects no



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"which do not find place therein."

<sup>2</sup> *Revised  
Statutes  
1962  
c. 104, s. 3.*

extend the scope of section 197 to read into it words which do not find place therein.

We are, therefore, of the view that the order of acquittal passed by the learned Assistant Sessions Judge in this case is clearly illegal and must be set aside.

The result, therefore, is that this appeal is allowed. The order of acquittal is set aside. The case will proceed to trial according to law.

*Appeal allowed.*



1961  
 AIR 1961  
 SC 1000  
 (1961)  
 1000

of the Sanmanthan and there is thus an abrogation of s. 41 of the Societies Registration Act.

(ii) that the new constitution of the Sanmanthan was passed by authorising the government of s. 46 of the old constitution and no other ground has not been validly put out and cannot be treated as being effective.

(iii) that the new rules have not been legally framed and are consequently void.

(iv) that on the allegations that the former proceedings were void and void and the new rules void it is open to such other members of a society to bring a suit and a civil suit can take cognisance of the same.

(v) that there is no immediate discharge of a member merely because the proceedings in which he is appointed treasurer of the object for which he was appointed are not achieved.

(vi) that the members of the Sanmanthan will continue to act as the officers till the new office holders are elected and till change of their respective offices.

*Costs decreed*

Special Appeal no. 471 of 1958 (Connected with special appeal nos. 472, 473 and 474 of 1958) from the decision of Cal. J. in Original Suits nos. 1, 2 and 3 of 1956, dated 15th October, 1958

The facts appear in the judgment

A. P. Pandey, Ch. Keshu Nath and S. H. Kacker for the appellants.

R. S. Pathak, for the respondents

The judgment of the Court was delivered by—

J. S. Bhat, J.—These four connected appeals are directed against the decrees passed by our brother Cal. J. in favour of the original civil petitioners of this Court in these consolidated suits. The three main suits in the Hindu Sahaya Sanmanthan which is a body registered under the Societies Registration Act (No. XXI of 1898) and is hereinafter referred to as the Sanmanthan. It was constituted several decades ago for the purpose of promoting Hindu language and to develop Hindu literature. In the year 1915 certain



rules were framed for the management of the affairs of the Sammelan. With the prospects of Hindi being recognised as the national language of India in the Constituent Assembly it was felt by a large section of the Sammelan that it had become necessary to introduce fundamental changes in the objects, programme and the constitution of the Sammelan. The annual session of the Sammelan for the year 1949 was held in December of that year at Hyderabad and there a resolution was passed appointing a committee of twenty-one members for drafting a new constitution on six of rules for the Sammelan in order to make it fully representative of all the Hindi regions of the country. The resolution also provided that the new constitution after being drafted should be placed for approval before a special session of the Sammelan. It is the common view of the parties that the committee of 21 persons mentioned above (hereinafter referred to as the first committee) drafted a constitution and the said draft was placed for approval before the special session of the Sammelan convened at Poona in June 1950 but for certain reasons the same could not be passed in that session. Instead, resolution no. 1 was passed appointing another committee of eleven persons (herein below referred to as the second committee) for drafting a new constitution and one in fact was drafted by the second committee. The new session of the Sammelan was held at Kashi in December 1950 under the presidency of Sri Jaihind Vaidyanath and though it was intended to put before the delegates assembled there the draft prepared by the second committee it could not be so done as the draft became unworkable. The Kashi session thereupon passed resolution no. 11 which is to the effect that new constitution be prepared by the second committee and the same when drafted would be deemed to have been adopted by the Sammelan if and when it was signed by

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 The Hon.  
 Shri Jaihind  
 Vaidyanath  
 President  
 of the  
 Sammelan

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right out of eleven members of the committee. The second committee drafted another constitution and by the 20th August, 1951 seven of its members signed it. Its signatures of eight or more than eight members were required to carry the constitution. Sri Mohan Chandra Sharma who was the convenor of the committee called a meeting for 25th of August, 1951, at Allahabad for the consideration of the new constitution (submitted to it in this judgment as new rules also) but before the meeting could be held one of the members of the second committee appended his signature to the draft constitution on 11th of August, 1951, thus making the number of the signatures to that constitution as eight. Thereafter some of the members of the Legislative Council took up the stand that the new constitution had come into force as it had been signed by eight persons. On 26th August, 1951, Sri Beldar Mani and two others filed civil suit no. 357 of 1951 in the court of Muzul (West) Allahabad against Sri Jachand Vidyalankar and eleven others *inter alia* on the allegations that the resolutions no. 1 passed at Patna special session and resolution no. 11 passed at the Kosi Session were ultra vires and inoperative and the new constitution was invalid. The relief claimed in the suit was for a declaration that the resolutions mentioned above and the new constitution were ultra vires the Committee and were null and void and further that the constitution drafted by the first committee and placed before the Patna Session was the valid constitution. A prayer was also made for a permanent injunction restraining the members of the second committee from meeting on 25th August, 1951 and from appending the draft constitution as also from giving effect to it. This suit was contested by the Defendants no. 1 Sri Raj Kishan Sharma Aggarwal and the Defendants no. 2 Sri Mohan Chandra Sharma who pleaded *inter alia* that the new constitution was a valid one

and so on, that the Sammilan being an autonomous body no suit in respect of its internal management was maintainable at the instance of the plaintiffs and further that the price was undervalued and the committee paid was insufficient. A claim for special costs under section 51-A, Civil Procedure Code was also made. The learned Master framed the following issues as the case:

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(1) Are resolutions nos. 1 and 11 of Purna Season and Kaula Season respectively, and draft constitution framed by Defendants nos. 2 to 12 ultra vires of the Sammilan and null and void?

(2) Has the Court jurisdiction to try the suit?

(3) Have plaintiffs any interest in the management of the affairs of Defendants no. 1-12? Have the plaintiffs any right to maintain the suit?

(4) Is the valuation given in the plaint undervalued and misleading? Is the court fee paid sufficient?

(5) To what compensation, if any, is Defendant no. 2 entitled under section 52-A, Civil Procedure Code?

(6) To what relief, if any, are plaintiffs entitled?

On 6th September, 1951, the Sammilan through its Secretary Sri Rai Ram Chandra Agarwal filed in the name of a cross case to Suit no. 387 of 1951, civil suit no. 684 of 1951 in the court of the Master (1950), Allahabad, against Sri Jaihind Vaidyanathan who also on the allegations that the new constitution had come into force on 10th August, 1951, and the defendants had wrongly called a meeting for 7th September, 1951, of the old standing committee of the Sammilan to consider the questions relating to the acceptance or non acceptance of the new constitution. The relief claimed in the suit was a declaration that the office bearers of the Sammilan were bound by the new constitution approved

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ed on 11th August, 1961. There was also a prayer for an injunction restraining the defendants from holding the proposed meeting or acting in accordance with the old constitution (also referred to by me as the old rules). The suit was amended later also on the allegation that the constitution prepared for being presented and passed at Patna special session had been traced out and was in possession of the defendants and further that resolution no. 1 passed at the Patna Session and no. 11 passed at the Ranch session were ultra vires the constitution. The following issues were framed in the suit:

- (1) Whether the new constitution prepared, approved and signed on 11th August, 1961, is valid?
- (2) To what relief, if any, are the plaintiffs entitled?

In this suit the plaintiffs obtained from the learned Master (Went), Allahabad, a temporary injunction restraining the President of the Samachar from considering matters relating to the conduct of the affairs of the Samachar and the new constitution. Notwithstanding the injunction the meeting called for 5th September, 1961, was held at that place through the President attended himself from it. In this meeting a resolution was passed removing Sri Rai Ram Chandra Agarwal from the post of the Secretary of the Samachar and electing new office bearers.

On the 15th September, 1961, civil suit no. 75 of 1961 was filed in the Samachar through Sri Rai Ram Chandra Agarwal, its secretary, and Sri Rai Ram Chandra Agarwal in his personal capacity in the court of the Civil Judge, Allahabad, against Sri Jaichand Vaidyanath and seven others inter alia on the allegations that the defendants and their partners had illegally decided to declare the new constitution null and void and thus

in bring the Plaintiff no. 2 in August, that the Defendant no. 1 had decided to call a meeting of the old standing committee of the association on 9th September, 1961, to consider the questions relating to the conduct of the Plaintiff no. 2, the newly prepared constitution and others matters relating to it and had quite illegally removed Plaintiff no. 2 from the office of the General Secretary and elected new office-bearers. The prayer in the suit was that the proceedings held in the meeting of 9th September, 1961, affecting the position of the Plaintiff no. 2 (Shri Ram Chander Aggarwal) and appointing new office-bearers in place of the old ones be declared ultra vires and null and void. A prayer was also made for an injunction restraining the defendants from giving effect to the resolution passed in the meeting held on 9th September, 1961. When the suit was filed there were eight defendants to it. Later on additions were made and ultimately as many as 186 persons were impleaded as defendants. In this suit one written statement was filed by Shri Jaichand Vidyalankar, Defendant no. 1, another by Shri Ram Chander Vohra, Defendant no. 4 and the third one by Shri Pradip Kumar, Defendant no. 8 and five other defendants. The plea in all the three written statements inter alia were that the resolution passed on 9th September, 1961, was valid and effective and that the standing committee was competent to appoint and remove office-bearers, that in so much as the suit related to the internal management of the Association it was incompetent, that the suit was barred by section 8, Civil Procedure Code as also section 42, Specific Relief Act, that the Plaintiff no. 1 was not properly represented in the suit that the Plaintiff no. 2 was not entitled to maintain it. The following issues were framed in the suit:

- (1) Whether the resolution of 9th September, 1961, affecting the position

978  
 Shri Ram  
 Chander  
 Aggarwal  
 v.  
 Defendants  
 Nos. 1  
 to 186  
 J. S. No. 1, 2

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Notes of Flaxmill no. 2 and adjoining area, after  
burning in place of old ones, is about 75 yrs. and still  
well used.

(2) Is  $\text{Flanell}$  as I properly represented by  
Gloss the same?

What do the numbers tell you? Do you need to change your ways?

(1) is the rate interest by Section 9, Civil Procedure Code and Section 18, Specific Relief Act.

(j) How the court is going to determine the real estate value.

(3) To what relief there are the plaintiffs entitled?

On this October 1981 she learned Civil Judge, Alshabul, appointed her Joseph Sourap, Sub-Dean of the Court, as receiver of the property belonging to the Foundation and thereafter her Joseph Sourap has been looking after the affairs.

This Court withdrew all the cases with numbers shown in its own file for purposes of disposal and re-numbered them. Case no. 103 of 1911 was numbered as case no. 1 of 1906. No. 804 of 1911 was numbered as case no. 2 of 1906, no. 71 of 1914 as no. 3 of 1909 as this Court. The three cases were consolidated with the records of the parties and were disposed of by one judgment. Since the 14th of October, 1914, by one brother this case no. 1 as case no. 1 of 1906 was annulled by him by saying that the constitution prepared in August, 1901, was invalid. Perhaps this finding has been too hastily stated by our brother because a reference to his finding on case no. 3 would show that he only found that rule 2 of the new constitution was void and the other rules as it were valid. Therefore, the result of making the findings of Cox, J. on cases nos. 1 and 3 together is that it is only rule 2 of the new

construction which he has found to be correct. On issue no. 5 his finding was that the bill with regard to the declaration about the revivability of rule 2 of the new constitution was unconstitutional but not with regard to the other votes in the constitution. Issue no. 4 he answered against the defendants by holding that the act had not been unconstitutional and the constitution good was sufficient. Issue no. 3 he answered by saying that the Defendants no. 3 was not entitled to any compensation under section 15 A, Civil Procedure Code. After rendering these findings our brother Oak closed the case in part and granted an injunction prohibiting the defendants of that part of the new constitution which he had found to have been framed illegally.

The learned single Judge answered issue no. 1 of our no. 2 of 1934 by saying that the new constitution was invalid. He answered issue no. 2 by saying that the plaintiffs have not entitled to any relief.

In issue no. 1 the learned single Judge answered issue no. 1 against the plaintiffs. On issue no. 2 he found that the Plaintiff no. 1 was properly represented in the suit. Issue no. 3 he answered by saying that the Plaintiff no. 2 was entitled to file the suit but subject to his findings on issue no. 1. Issue no. 4 was not pressed before him. He however held on this issue that the suit was not barred either by section 5, Civil Procedure Code or by section 42, Specific Relief Act. Issue no. 5 he found against the plaintiffs by holding that the civil court "ought not to entertain this suit." On issue no. 6 he recorded the finding that the plaintiffs are not entitled to any relief. The learned single Judge is the son, divorced son Jagdish Senapati, the official assistant, to hand over charge of the properties belonging to the Government to Sri Jagdish Vidyalalakar who was in Pension in 1951.

1934  
The Hon.  
Chief Justice  
of India  
1934  
1934  
1934

1961  
 Raj Ram  
 Chandra  
 Agarwal  
 &  
 Jashwanth  
 Lal  
 (Solicitors)

In case no. 1, the learned single Judge decreed nos. nos. 2 and 3 of 1961 as well as decreed case no. 1 of 1960 partly. He declared resolution no. 1 of Purna Sabha and resolution no. 18 of Kotah Sabha and also the new constitution as so far as the amendment of the objects or purposes (Uddesh) was concerned as invalid. He also directed the defendants "not to give effect to rule 2 of the new constitution until the objects or purpose (Uddesh) are amended to the satisfaction in accordance with law."

Special Appeal nos. 471 of 1958 and 156 of 1959 arise out of case no. 1 of 1956. The first one has been filed by Raj Ram Chandra Agarwal and Sarwan Das Tandon, Raj Krishna Benipuri, Uma Nath, Mahi Chandra Sharma, Bhadram Anand Kanchiyappa and Hindi Sahaya Samachar through Raj Ram Chandra Agarwal as secretary against Suresh Bindhar Mera, Ram Nagrai Tripathi, Krishna Narain Lal, Jashwanth Vajravelkar, Kanchaya Lal Mera, Pancham Mera, Krishna Deva Prasad Gaur and Ram Nath Suran and the second one by Sarwan Bindhar Mera, Ram Nagrai Tripathi, Krishna Narain Lal, Jashwanth Vajravelkar, Kanchaya Lal Mera, Pancham Mera, Krishna Deva Prasad Gaur and Ram Nath Suran against Sarwan Lal Ram Chandra Agarwal, Pancharam Das Tandon, Raj Krishna Benipuri, Uma Nath, Mahi Chandra Sharma, Bhadram Anand Kanchiyappa and the Hindi Sahaya Samachar through Raj Ram Chandra Agarwal as secretary. Special Appeal no. 472 of 1957 had been filed by the Hindi Sahaya Samachar through as secretary, Raj Ram Chandra Agarwal, Raj Ram Chandra Agarwal and Sri Pancharam Das Tandon also. Raj Ram Mera against Sarwan Jashwanth Vajravelkar, Krishna Deva Prasad Gaur, Ram Nath Suran, Suresh Bindhar Mera, Lokeshwar Narain Mera, Rajendra Singh Gaur, Mahesh Gaur Mera and Pancham Mera in case no. 3 of



First Special Appeal no. 473 of 1916 has been filed by the Hindu Sabha Sammelan through its secretary Rao Bala Chandra Agarwal and its President, Das Tandon also Rao Khanna against Sri Jirishand Vohralankar in original suit no. 2 of 1916.

All the four appeals were listed together before us in Special Appeal no. 471 of 1916 which has been filed by the defendants the prayer in effect is that suit no. 1 be dismissed in toto, while in Special Appeal no. 478 of 1916 filed by the plaintiffs and some of the defendants the prayer in effect is that the suit should be decreed in toto and even with regard to costs, other than rule 2 of the new constitution, a declaration should be given that the same are invalid and void. Special Appeal no. 472 of 1916 has been filed by the plaintiffs and their virtual prayer is that suit no. 1 of 1916 be decreed and a declaration be given that the proceedings in the meeting held on 31st September, 1911, are ultra vires and so is the election of the new office bearers in place of the old ones. Special Appeal no. 475 of 1916 has also been filed by the plaintiffs and the prayer in effect is that suit no. 2 of 1916 be decreed in toto and a declaration be given that the office bearers of the Sammelan are bound by the new constitution and further that an injunction be issued restraining the defendants from acting in accordance with the old constitution. Both in Special Appeals nos. 471 and 473 there is also a ground that, in our case, that part of the decree of the learned Single Judge which directs the transfer Sri Jagdish Swarup to handover charge to Sri Jirishand Vohralankar be set aside.

Mr. R. S. Pathak has appeared before us on behalf of the appellants in Special Appeal no. 478 of 1916 and on behalf of the respondents in the other appeals. Mr. S. R. Sarkar has appeared for the appellants in Special

1916  
 App. Nos.  
 471, 472, 473, 475  
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 Appeal  
 No. 1  
 of 1916.

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Appeals nos. 471, 472 and 473 of 1900. We will first take Special Appeals nos. 471 and 473 of 1900. Mr. Justice has challenged the findings of the learned Single Judge to the effect that rule 2 of the new constitution was void and has contended that in the present case there was an application of section 12 of the Societies Registration Act (hereinafter called the Act) and rule 46 of the old constitution was also not violated. By Justice's submission on the other hand is that section 12 of the Act applied to the facts of the present case and that is the effect of rule 2 of the new constitution is that the purpose for which the Association was constituted and registered under the Act has been changed. Section 12 of the Act reads as follows:

"Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose or to for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society such governing body may submit the proposition to the members of the society in a written or printed report and may convene a special meeting for the consideration thereof according to the regulations of the society: but no such purpose shall be carried into effect unless such report shall have been delivered in person or by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof nor unless such purpose shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the govern-

ing body is an interval of one month after the formal meeting."

It is the question one of the parties that in the instant case the procedure contemplated by section 12 of the Act has not been followed. The point, therefore, that requires determination is whether there has been any change of purpose of the Committee within the meaning of section 12 of the Act because of the framing of rule 2 of the new constitution and whether section 12 of the Act is merely directory and not mandatory and consequently its breach would not affect the validity of rule 2 of the new constitution. We shall first deal with the question whether section 12 is mandatory or merely directory. Though the word "shall" occurring in section 12 is not conclusive of the section being mandatory, it is highly suggestive of its being so. In the case of *Shankar Lal Agarwala v. The State of Bihar* (1) their Lordships held as follows.

"No general rule can be laid down for deciding whether any particular provision is a statute mandatory, meaning thereby that non-observance thereof involves the consequence of invalidity, or only directory, i.e. a direction the non-observance of which would nullify whatever other consequences may ensue. In order to decide as to whether a provision is mandatory or directory it must first be considered not only the actual words used but the scheme of the statute, the intended benefit to public of whom it is enacted in the provision and the material danger to the public by the contravention of the same."

The same view was taken by their Lordships in the case of *Rome Deyraj Kaur v. A. K. Nanda Singh* (2) and *Mori Fisher Karmath v. Ahmed Sahay*, (3) Section

1947  
Sri Sri  
Ganesh  
Anand  
v.  
Munim  
Shankar  
[ 1950 ]

1961  
 By His  
 Excellency  
 the Governor  
 of Madras  
 in Council  
 / 1961, 2

12 of the Act provides that the consent of three-fifths of its members is required for the dissolution of a society registered under the Act and if the Governor must happened to be a member of the society, his consent has also got to be obtained. Section 14 provides that in case of dissolution of the society, its funds are not to be distributed between its members but are to be given to some other society or be determined by the rules of not less than three-fifths of the members present personally or by proxy, at the time of the dissolution, or in default thereof, by a court. These provisions indicate that once a society is formed it should continue and neither its dissolution nor the change of its purposes can be lightly made. Section 17 of the Act provides that even in case of societies which were established before the Act came into force none of three-fifths of its members has got to be given for purpose of its being registered under the Act. This would show that there is an insistence on the part of the legislature on a majority of three-fifths in respect of all fundamental changes with regard to a society. These provisions it appears to us, to have been framed for public benefit and it is obvious that their operation is likely to endanger public interest. For these reasons we are of the opinion that the provisions of section 12 of the Act are mandatory and not merely directory.

It was vehemently argued that there is a difference between 'object' and 'purpose' of a society and it was contended that section 12 would apply when a change in the purpose was sought and not when a mere change in the object was attempted. In our judgment there is no difference between 'purpose' and 'object' in the Act. This is made clear by the provisions of sections 1 and 18 of the Act. Section 1 provides that the objects, rules and regulations shall contain the following



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SOCIETY  
ACT,  
1908  
SECTION 12

deals in their own spheres the management of the affairs of the Association is entrusted by the rules. The general body has no overall control over the management of the affairs of the Association and is alone competent under rule 46 of the old rules to amend or alter the rules. For these reasons it must be held that the general body of the Association is included in the expression 'governing body' occurring in section 12 of the Act.

Before we decide as to whether or not the object or 'purpose' of the society of the Association has been changed, it would first be necessary to consider as to what does the word 'purpose' mean. That word has not been defined in the Act. Section 1 of the Act however uses the word 'purpose' and provides that—any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with the Registrar of Joint-stock Companies, form themselves into a society under this Act. Thus the word 'purpose' has been used in a very wide sense. If a library society is established to promote literature it is founded for a literary purpose. Similarly if a scientific or charitable society is founded, it is established for scientific or charitable purpose. 'Purpose' has been used here in the sense of the main object. It has got nothing to do with the details of the programme of the society or with its activities. The society may draw out a chart of its activities and prepare a programme for its working but that would not be the 'purpose' contemplated by the Act. Section 20 of the Act reads, as follows:

The following societies may be registered under this Act:

Charitable societies, the auxiliary organs  
bodies or societies established in the several

provisions of India, were established for the promotion of scientific research, as the first step for facilitating the diffusion of useful knowledge, the diffusion of scientific information, the knowledge, or maintenance of libraries in reading rooms for general use among the members or open to the public, or public libraries and galleries of paintings, and other works of art, collections of natural history, mechanical and philosophical apparatus, instruments or designs.

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STATE  
OF  
NATURE  
IN  
INDIA  
[ 1850 ]

This section would also show that the word 'purpose' and that one has been used in a wide or comprehensive sense. That is, in the sense of the main object or the regard aim of the society, as distinguished from its detailed activities which will naturally be derived towards the attainment of this object. If a society is founded for purposes of promotion of learning, it runs as its main purpose, its means, all activities in the example for giving scholarships to deserving students, having a prize and a publicity department having an organizational wing or for holding examinations as awarding prizes, for loan books, or for holding annual sessions and conferences, or for popularizing Hindi language or foreign literature and so on and so forth. These are all the activities or the programmes of the society and should not be confused with its purpose. Purpose means the fundamental principles upon which the association was formed and the aims created for Welfare & Prosperity (1).

In the Oxford Shorter Dictionary, the word 'purpose' has been given the following meaning

"The object which one has in this intention, resolution, determination, the object for which

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 J (Smt.)

anything is done or made, or for which it exists, and, and

In Sanshodhan Iyats Law Lessons it has been stated

"The word purpose means that which a person sets before himself as an object to be reached or accomplished, the aim or end to which the view is directed in any plan, manner or execution; and or the view itself, design, intention." (See page 1112)

In the present case the Sanshodhan has one aim or purpose, that is, the promotion of Hindi literature and language. In order to achieve this main aim or purpose, it has got to necessary to have subsidiary aims and has to provide spheres in which the work of the Sanshodhan has got to be carried on in order to achieve the purpose. What was described in rule 1 of the old rules or in rule 1 of the new rules is not the purpose or the main aim but the subsidiary aims, that is, the various activities which the Sanshodhan wishes to pursue for the achievement of the main aim. Most of the activities in the two rules are common. There has been slight change in other activities but that change is not of a fundamental nature. It is true that rule 1 of both the new as also the old sets of rules is headed as 'Uddeshya'. In our opinion the word 'Uddeshya' has not been used in the same sense in which the word 'purpose' has been used in sections 1 and 12 of the Act. Whereas the word 'purpose' has been used in those sections in the sense of the general object for which the society has been established, the word 'Uddeshya' in the rules has been used in the sense of more proximate objectives which are sought to be achieved or the organs which are intended to be set up for the fulfilment of the fundamental purpose or principles of association.



The learned Single Judge held that, *inasmuch as* under rule 2(a) of the old constitution the purpose of the Sammelan was "to endeavour for the development and progress of Hindi literature in all its aspects" and the object and purpose of rule 3(1) of the new constitution is "to endeavour constantly for cultural rise of India through development of Hindi language and literature," there has been a distinct departure from the purpose and object of the Sammelan, and further that in so far as the same was brought about without following the provisions of section 12 of the Act, rule 3 of the new constitution was invalid. With great respect to our learned brother Jha, we find it difficult to share this view. We have already said that there is a difference between purposes and objects on the one hand, and the detailed programming of the activities of a society on the other which it wishes to lay in order to achieve the purpose or the other. In coming to this conclusion we have been influenced to some extent by the language of section 12 of the Act. The last line of that section reads as follows:

"A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association."

That section which has already been quoted as an earlier part of this judgment clearly requires that the memorandum of association shall contain the objects of the society. The last line of this section provides that along with the memorandum of association a copy of the rules and regulations of the society shall be filed. This indicates that the place for the mention of the purpose of a society is the memorandum of association and not the rules. The rules may be a body of provisions framed for the governance of a society, but should not be confused with the memorandum of association.

IN  
THE  
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and it should not be forgotten that it is not the rules, but the memorandum of association in which the purposes of the society are contained. In other words, the purpose or object contemplated by section 12 of the Act is the purpose mentioned in section 1, and the object mentioned in section 2 of the Act.

Inasmuch as the memorandum of association was having been filed in this case, it was before us, we do not know what was the purpose for which the Sammelan was established. There is no other document, also from which we may gather with any measure of certainty the purpose for which the founders of the Sammelan was dated as established in *Admission* the Sammelan was founded long before September 1948. The rules (Bye-laws) passed in the 11th/12th Session of the Sammelan on 11/12 August and 18th September, 1948, is not the memorandum of association. There is no reason to suppose that rule 2 of the old constitution is a copy of the purposes set forth in the memorandum of association. We cannot, therefore, be sure that, by reason of the new constitution the purpose for which the Sammelan was originally formed has been changed. Assuming that rule 2 of the old constitution dealt with the "purpose" of the society (Sammelán) it may be said that there is such a difference between the rule and rule 2(1) of the new constitution as to justify the conclusion that the purpose for which the Sammelan was formed has been changed. Even rule 2(1) of the new constitution goes to the object of the society "the development of Hindi language and literature in all its aspects." The only difference between the two rules is that in rule 2 of the old constitution the purpose is "development and progress of Hindi literature in all its aspects," in rule 2 of the new constitution the development of Hindi language and literature is to be achieved with a view to being about the cultural life

of India. It is true that development of the language as literature will be simultaneous with the cultural development of the State or the nation in which the language is used. The new are bound to precede rule by law. It appears to us that even under rule 256 of the old constitution the efforts of the Government in developing Hindi literature would have resulted in the cultural life of India especially where Hindi has been accepted as the national language of the country. The cultural life of a country includes the development and progress of its language and literature. The new rule 256 cannot, therefore be held to have introduced any fundamental change. It has only brought out what was inherent in the old rule 2. Our brother Das also agreed that the life of development of Hindi literature is inherent in both the constitutions, but held that a change of purpose had been brought about because he thought, Das there was a change in emphasis. Another ground on which he held that the purpose of the State within had been changed is because of rule 256 of the new constitution. Rule 256 of the new constitution is translated in English by him much as follows: "To popularise Hindi language and literature in the foreign countries." He held that emphasis in the old constitution did not put any such object in its rules, there had been a change in the purpose of the Government. In our opinion the words "to emphasise for the development and progress of Hindi literature in all its aspects" occurring in rule 256 of the old constitution are wide enough to embrace in their scope the popularisation of Hindi language and literature in foreign countries. In a matter like this one word need not be over-technical and the purposes of a nation have to be widely considered. The aim or the object with which or the purpose for which broadly speaking the Government was founded was to develop and popularise Hindi literature in all its aspects. The expansion of Hindi is one

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deputé sends the General Secretary, at least two months before the opening of the Session. It shall be the duty of the General Secretary to send for publication in newspapers, the proposals for amendment of rules and put them up before the Standing Committee. The Standing Committee shall place each of these proposals before the next session meeting with its own views.

(3) The proposals for amendments of rules shall like other proposals, be placed before the Assembly by the Rules Committee; and they shall, like other proposals, be passed by a majority of votes of the delegates. Only for stating the head office, it shall be necessary that two-thirds of the delegates present, excluding the delegates residing in the city where the session of the Assembly is held, should support the proposals for changing the place.

It was held by Oza, J., that the new Constitution was not framed in accordance with the provisions of article 41 of the old constitution, because the delegates present in the meeting of the Sumnerian alone could amend the rules and thus power could not be delegated by them to the second committee. On behalf of the applicant it is contended that the view of the learned Judge is wrong and there was no bar to the delegates of the Sumnerian delegating that power to a sub-committee. It is common ground that there is no express provision in the old constitution under which the general body could delegate their functions to a committee. It appears to us that though there was an legal objection to the general body appointing a committee to draft a constitution that could not have prevented them if and when eight or more of the members of the Sumnerian gave their assent to the draft constitution forwarded by the committee the same would be effective.

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and would be a ruled constitution without being placed before the general body. Reading rule 56 it appears to us that there is no scope for the interpretation that the general body could have authorized rights to more members to join the constitution. The line of the opinion that is allowing this to be done, the general body abdicated its functions and that part of the resolution cannot be supported. It would contribute to create a correct understanding of the scope of rule 56 if some portions of the rule were read in original. Those words are as follows:

'In aqamun mun pasharun la adharu kun mada la apashu prashadhyun la hagu. Pash mada la prash-karun la adharu alhu qamun la adharu mada madaadhu. Pashayn Samaglayun la hagu nar nar prash Samaglayun la adharun an kun an kun da qam public Prashay. Mada la po an jay dhalay.

(lit)—Kiyamun la prashayn la prash arya prashayn la mada samaglayun nar vlaya narva chin chun apashu kiya jay nar arya prashayn la mada prashadhyun la adharun an mada an mada hagu.'

The opening words of the rule clearly provide that the delegates assembled in a session of the Samaglayun shun shall be competent to change the rules. It is true that word alone is not there but that seems to be the effect of the language used. Secondly, the resolution relating to the amendment or change of the rules has got to be placed in a meeting of the Subjyon Committee and has got to be passed by a majority of the members there. This means that before the rules can be amended or changed they must be placed before the Subjyon Committee. This can only be done if the delegates themselves amend the rules. No question of

passing before a Subpoena Committee was one of the powers to change the rules have been given to a committee appointed by the Assembly in the process of the second session.<sup>1</sup> It is well established that, if a power is required to be exercised in a particular manner it must be exercised in that manner or not at all. See Taylor v. Taylor (1) 120 N. H. 201 and v. Sawyer (2) 121 N. H. 201; Council v. Board of Reg. (3) 122 N. H. 201. We are also clear in our mind that a function so essential and fundamental to the House cannot be delegated without there being any provision in the old constitution authorizing such a delegation. Rule 15 appears to us to be a mandatory provision. A study of the various rules contained in the old constitution lead us to the conclusion that rule 15 is not directory and is, if regarded as such, to be a mere irregularity. It is well known that when powers are given to a person, corporation or an authority, the same cannot be delegated unless there is an express provision authorizing the delegation. See *Case v. Ward* (4). The function relating to the preparation of the new constitution or rules is an essential legislative function which the Assembly itself must perform.

In Corpus Juris Secundum, Vol. 14, the question of the amendment or change in the constitution or the rules has been summarized in the following words on pages 1843 and 1845:

<sup>1</sup> If a Club adopts a constitution and by-laws, they constitute a contract between the Club and its members, binding on both, whether the Club is incorporated or not. A by-law of a Club can be adopted only on compliance with the provisions, if any, in the by-laws themselves, and by-laws, which are necessary and coordinating rules

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 1974a  
 1974b

of Conventions, can be amended or repealed only in the manner prescribed by the by-laws.

The law is stated in *Corpus Juris Secundum*, in one opinion, is also applicable to societies registered as clubs. For these reasons, in our judgment, the new constitution was placed in contravention of the provisions of rule 46 and on that ground has not been validly passed and cannot be treated as being effective. We say this notwithstanding the fact that the general body (the delegates assembled at a session) did not pass the constitution and it is invalid on that ground, the new constitution also differs from another defect and that is, that the procedure provided in rule 46 of the old constitution has not been followed. This rule requires that before the rules are amended or repealed a resolution to that effect should be moved by one of the members of the Standing Committee (Joint Committee) and that such a resolution must reach the majority of the Senators at least one month before the commencement of the session of the Parliament. It also requires that when such a resolution is received it shall be published in newspapers and that the resolution should be placed before the meeting of the Standing Committee who will place it before the delegates of the Parliament in one of its sessions along with their own suggestions. It is common ground that none of these conditions were observed in the present case. In fact, there could be no occasion for the observance of these conditions because the Parliament had passed resolution no. 11 authorizing the Standing Committee to draft a constitution and providing that if eight or more than eight of its members agreed, it, the same would be deemed to be a valid constitution. None of the procedure provided in rule 46 referred to above, appears to us to be mandatory and not merely directory. In disregard, in our opinion, also renders the



second constituent ineffective. The first state that rule 45 is not only a procedural provision made solely for the purpose of the convenience of the Association or its constituents. Its function is a much more fundamental. It deals with the question of privilege also in so far as it confers on the delegates assembled in the name of the Association (the general body) the right and qualification to amend their own change the rules. There is good authority for the proposition that if a rule or by-law has been framed by a corporation for its convenience and only to guide itself in the conduct of its business, as *Strategic* is not ascertainable. See *Mason-Jell Bond, 18 Chancery* 1. See also *Smith & Smith* (1). The provisions and the scheme of the Act show that in establishing a society different persons associating and the memorandum of association is also the rules, subject to an agreement between them governing their relationship. It was held in the case of *Wool Parsonage Bond* v. *John Jackson* (2) that the relationship between the members of unincorporated members club is governed by the law of contract and if the members have agreed in certain terms which are embodied in the rules then it is enforceable or to be made enforceable as a condition with the terms agreed upon by the members. These rules now govern their relationship. In drawing rule 45 the delegates agreed not to change the rules in the constitution except by an act of theirs and also following the procedure provided by that rule. Even a majority cannot destroy the effect of that one rule incorporated in rule 45 without first following or amending that rule in accordance with the law.

It has been urged that when the general body passed a resolution to the effect that if eight or more persons signed the draft rules, the same would be effective it must be deemed that the Association passed the rule when eight members of the several constituent voted

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 The Hon.  
 Charles  
 Stewart,  
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 Messrs.  
 1901, 1902

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11. Whereas we have no doubt that it was open to the Senate to have appointed a committee to frame draft rules, it could not have left to that committee by eight or more of its members to act for the general body. We are conscious that a function like the drafting of rules could not, by its very nature, be performed or properly performed by the delegates and a much smaller body was needed for the same. If the delegates had only left the matter at that there could be no difficulty. But they have done much more. In fact, they have abdicated themselves in favour of eight or more members of the second committee. In the case of *Pradyut Kumar v. The Chief Justice of Calcutta* (1), one of the grounds of attack against the order dismissing Pradyut Kumar from the post of the Registrar, Criminal Side of the Calcutta High Court, was that the Chief Justice had left it to a brother Judge to conduct an enquiry into the charges framed against Pradyut Kumar and an argument was advanced that that could not be done. While repelling the submission the Supreme Court observed as follows:

"It is well recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be done except where the law specifically so provides is the ultimate responsibility for the exercise of such power."

These words in our judgment also apply to a case like ours and we are of the opinion that there was no objection to the delegates having appointed the second committee to deal the constitution but that should

have considered their ultimate responsibility, deciding whether or not the draft constitution prepared by the committee should be passed. For the reasons now stated above, it is my judgment the second constitution has not been validly passed.

The question however that still remains to be considered is whether the suit relates to the internal management of the Kamathia or not and whether a civil court has jurisdiction to entertain such a suit. It is clear that a suit is a judicial process opened by its member as is a company. See *Supreme Industries v. Mangesh Prakash Awardekar* (1). Therefore, the normal rule is that in respect of the internal management of the society, the society as such and not its individual members can sue. There have been a large number of cases both in India as also in England where courts had to consider whether a suit can be brought in respect of the internal management of a company otherwise than in the name of the company itself, by individual members thereof. There is good authority for the proposition that the case of society registered under the Act is similar to that of a club or a joint-stock company (See *T. S. Krishna v. M. Sundaresw*) (2). A Full Bench of the Court in the case of *Mool Fajwari Ramell v. John Jackson* (3), has held that the same principles apply to a club which applied to a joint stock company. In the leading case on the subject *Paul v. Whitcliffe* (4), it was held that the normal rule is that the corporation should sue in its own name and in its corporate character, as in the case of some one whom the law has appointed to be its representative. *Mundy v. Alden* (5) is an authority for the proposition that ordinarily individual shareholders cannot sue in a Bill in their own names in respect of a matter common to all or relating to the internal management of the company. In

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 THE HON.  
 CHIEF JUSTICE  
 OF THE  
 SUPREME COURT  
 OF INDIA,  
 J. J. LING.

(1) A.I.R., 1940 Mad. 449.

(2) A.I.R., 1940 Bom. 247.

(3) 1941 A.C. 447.

(4) 11 Q.B. 291.

(5) 1908 1 K.J.R. 107.

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the case of *Mrs. Duggan v. Gervier* (1) the court held that it could not interfere in the internal management of a company and dismissed an action brought by one shareholder on behalf of himself and all other share holders excluding the Directors, against the Directors and the company complaining against various matters divided in a meeting. To the same effect is the decision of the Bombay High Court in *Shayler v. Shanks* (2) and of the Madras High Court in *Mogha v. Madras Mercantile* (3). The Bombay High Court took the same view in *Jagdish Lal Chaudhary v. Jyoti Sanyal & Co.* (4) which was a case of a registered money. This general rule however has got an exception as pointed out in the Madras and Bombay cases referred to above. The exception is that a shareholder can bring an action with regard to an internal management of a company if (1) the action of the majority is ultra vires the constitution, (2) where the act complained of constitutes a fraud on the minority, (3) where the action of the majority is illegal and (4) where a special resolution is required by the Article of the company and the assent of the majority to such special resolution is obtained by a trick, or even where a Company undertakes to do a particular thing only by a special resolution done or without a special resolution duly passed. In our case the complaint of the plaintiffs was that the majority of the delegates of the Kamelian acted without jurisdiction in resolving that if eight or more members of the second committee signed the draft rules prepared by it the rules would become effective and that eventually in the new rules were brought into force without following the procedure provided by rule 46 and statute 12 of the Act the entire proceedings were ultra vires and the new rules void. In our judgment, the allegations like those it is open to individual members of a

(1) 1927 (1) 1 L.J. 100.  
 (2) 1928 1 L.J. 100.

(3) 1928 1 L.J. 100.  
 (4) 1928 1 L.J. 100.

order to bring a writ and a civil case can take cognizance of the case. The plaintiffs in the case giving rise to this appeal are members of the Smoking Committee of the Legislature and as such are interested in its affairs. But these reasons are one of the opinions that there is no difficulty in the way of this Court holding that writs relief have not been legally obtained and are consequently void. The result of this conclusion is that Special Appeal no. 471 of 1933 fails and Special Appeal no. 335 of 1934 should be allowed.

1934  
 The Hon.  
 Justices  
 of the  
 Supreme  
 Court  
 of  
 Alabama  
 1934

We now come to Special Appeal no. 472 of 1934. After the constitution of the appeal an application was made to the Court for permission to withdraw the appeal. This prayer was objected to by the respondents. On 22nd October, 1934, a Bench of this Court consisting of McCREARY, C. J. and DAVIS, J. allowed the application on the ground that Ben Ryan Chasins Agarwal, one of the appellants, was permitted to withdraw from the appeal and his name was directed to be expunged from the array of the parties. At the time of the hearing of the appeal Mr. S. M. Kulkar, learned counsel for the appellants stated that inasmuch as the new office hours are now altered for one year until 1st September, 1935, and this period had expired, that since no longer in office and consequently so far as the works were concerned the appeal had become infructuous and as such he did not wish to press it on merits. He also stated that he wanted to confine his submissions only with regard to that part of the decree of the learned single Judge wherein he had directed the recovery for Jagdish Swarup in hand over charge to Sri Jashwanth Vallabhai. In view of these statements and the fact that Sri Ben Ryan Chasins Agarwal, who was the main aggrieved party, has withdrawn from the appeal, the same may be summarily dismissed and all that we need consider is whether the direction given to our brother Gou



that Swamy is continued till the elections take place. The object for which Sri Jagdish Swamy was appointed has not yet been achieved even though the proceedings relating to the dispute between the parties are coming to a close. There is no systematic discharge of a receiver merely because the proceedings in which he is appointed terminate if the object for which he was appointed are not achieved, see *Hop & Roman Intercolliers v Hop & Albinsson* (1) and *Mitchell v. Reid*, *Reid v. Mitchell*, *Providence Works* (2).

1911  
H. & R.  
Intercolliers  
v  
H. & A.  
1911  
[ 1911, 1 ]

In the present case we consider it not only desirable but imperative that the receiver should continue and Sri Jagdish Swamy should not be directed to hand over charge till a fresh election is held. For the last ten or eleven years there has been no election of office-bearers. It is therefore necessary that, election should be held and the receiver being an independent person is best fitted for making the necessary arrangements in that regard. We, therefore, are made this part of the decree of our brother Oak and direct that Sri Jagdish Swamy will continue to act as the receiver till the new office-bearers are elected and take charge of their respective offices. He shall forthwith take steps to hold an election. After the elections have taken place Sri Jagdish Swamy shall hand over charge to the new President.

With regard to Special Appeal no. 475 of 1933 we may state that while dealing with Special Appeals nos. 471 and 474 of 1933 we have already found that the new rules are invalid. In view of that finding the suit of the plaintiffs, who are the appellants before us, has been rightly dismissed. The only submission made is that the direction of our brother Oak that Sri Jagdish Swamy should hand over charge to Sri Jashwanth Vidyalankar should be set aside. While dealing with

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Special Appeal no. 472 of 1928 we have already said that such a direction is liable to be set aside.

The result is that Special Appeal no. 471 of 1928 is dismissed and Special Appeal no. 470 of 1928 is allowed. Special Appeals nos. 472 and 473 of 1928 are dismissed except to the extent mentioned above. The parties shall bear their own costs throughout.

*Appeal dismissed.*



## CRIMINAL MISCELLANEOUS

(Criminal)

*Before Mr. Justice Unjial and Mr. Justice  
Ramesh Chandra*

SADHU SINGH and others

1935  
April 13

v

## STATE

**Order in Criminal Appeal.**—On the judgment and order passed by the High Court in appellate jurisdiction—(1) the High Court has jurisdiction to grant under s. 381-A Code of Criminal Procedure, 1898—(2) if the refusal by the Supreme Court to grant special leave to appeal put the remedy available.

The applicants were sentenced under s. 302 Indian Penal Code by the Sessions Judge, Sahar. The Sessions Judge was sentenced to death while the remaining applicants were sentenced to life imprisonment. Their appeal was dismissed by the High Court on 15th July, 1935, and an application for leave to appeal to the Supreme Court was also dismissed. Thereafter they moved the Supreme Court by means of a petition for special leave to appeal but it was refused.

The applicants now applied to this Court under section 381-A, Code of Criminal Procedure for review of the appellate order of the High Court, dated 15th July, 1935, with a request to examine fresh evidence and to rehearse the case in the light of new facts brought to its notice. A preliminary objection was raised on behalf of the State that the applications for review filed by the applicants were not admissible.

The Court after considering its facts—

**Held,** (1) that so long as the order of dismissal of petition for special leave to appeal by the Supreme Court stands the High Court would be functus officio and it could not review or alter its judgment in the proposed course of an rehearing process.

(2) that once the Supreme Court has dismissed a petition for special leave to appeal in a criminal case the High Court cannot or have jurisdiction over the matter and has no power to entertain a review application which would have the effect of disturbing the order made by the Supreme Court.

(3) that there is a remedy available to the applicants to approach the Supreme Court under Article 131 of the Constitution to review its order dismissing their petition for special

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leave is appeal so as to have the matter reopened on the ends of justice.

(iv) that the inherent power of the High Court under s. 401 A, Code of Criminal Procedure cannot be invoked where no such remedy is available and further that the remedy is exhausted cannot be made to override the express provisions of law.

(v) that the inherent power which was preserved to the High Court under s. 401 A, Code of Criminal Procedure did not include power to review its judgment on grounds under sec. 401 B, Cr. P. Code of Criminal Procedure and so the High Court does not possess an inherent power to review its judgment on the grounds of discovery of new matters or evidence, in criminal matters.

(vi) that we are here concerned with the review of an appellate order of the High Court and therefore s. 401 Code of Criminal Procedure will apply, giving thereby to such order, and those being its grounds in the Code of Criminal Procedure does empowering the High Court to review its appellate judgments or order s. 401 A, Code of Criminal Procedure cannot override its express provisions of the Code by creating a new category of inherent jurisdiction.

(vii) that there may be cases such as in criminal matters in finding out something as law, or where the High Court may exercise its inherent jurisdiction to make consequential orders, cases in its order that that the inherent power is being exercised to further the ends of justice and that Court is not called upon to re-examine the evidence or to introduce fresh material on the record for the purpose of doing the matter.

Case law discussed.

Criminal Misc. Case no. 151 of 1951 (connected with Criminal Miscellaneous Case no. 175 of 1951)

T. Rathore, G. N. Sharma, Bhawinder Singh and J. R. Dethwadi, for the applicants.

The Government Advocate (B. D. Gupta) and Assistant Government Advocate (B. N. Kojia), for the State.

The Judgment of the Court was delivered by—

UNANI, J. —The applicants were tried for the offence of murder by the Sessions Judge, Mirat Tal., and were convicted under section 302, I. P. C. by an order, dated 18th April, 1950. Sadhu Singh was sentenced to death while the remaining applicants were

continued in imprisonment for life. Their appeal was dismissed by the High Court on 12th July, 1960 which confirmed the death sentences passed on Salub Singh. The applicants then applied for leave to appeal to the Supreme Court but the same was dismissed by the High Court on 12th August, 1960. Thereafter they moved the Supreme Court by means of a petition for special leave to appeal but it was also rejected by an order dated 17th October, 1960.

106.  
Special  
leave  
to  
appeal  
from  
the  
High  
Court.

Level 2.

The applicants have now applied to the Court under section 483-A, Cr. P. C. for review of the appellate order of the High Court dated 12th July, 1960 on the allegation that the disclosure prepared by the investigating officer and relied upon at the trial was a forged document and that perjured evidence had been produced by the prosecution in support of its case. This Court is, therefore, asked to examine fresh evidence and to re-examine the case in the light of new facts brought to its notice.

A preliminary objection has been raised by the learned Assistant Government Advocate that the applications for review filed by the applicants are not maintainable. It is contended that the dismissal by the Supreme Court of their objection for special leave to appeal amounts to a final order and the High Court is functus officio and has no jurisdiction to quash or disturb the said order in any way.

In reply the learned counsel for the applicants contended that the order of the Supreme Court refusing to grant special leave to appeal was not a final order in the judgment of the High Court could not be said to have merged in the order passed by the Supreme Court. He argued that the High Court's power of review under section 483-A, Cr. P. C. was not affected by the order of the Supreme Court dismissing petition for special leave to appeal.

186  
Am.  
Inst.  
•  
Inst.  
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Inst. 3

The first point that falls to be dealt with is whether the rejection by the Supreme Court of the applicants' petition for special leave to appeal amounts to a final order and, in such, operates as a bar to the maintainability of the various applications filed by the convicted persons.

Under Article 133 of the Constitution the Supreme Court has discretion to grant special leave to appeal from any judgment, sentence or order passed by the High Court. In exercise of its rule-making power under Article 145 the Supreme Court has framed rules which are called the Supreme Court Rules, 1950. Rule 3 of Order XXI of the Supreme Court Rules says that a petition for special leave to appeal in criminal proceedings shall state succinctly and clearly all such facts as may be necessary to state in order to enable the court to determine whether special leave to appeal ought to be granted. Rule 4 provides that the petition shall be accompanied by a certified copy of the judgment or order sought to be appealed from and the affidavits prescribed therein. Rule 5 states that on the granting of the petition the petition for special leave to appeal shall be treated as a petition of appeal and shall be registered and numbered as such.

The Supreme Court Rules indicate that the granting of a petition for special leave to appeal would amount to the admission of the appeal itself. It would follow that the dismissal of such a petition would likewise be regarded as the dismissal of the appeal. In other words, the order of dismissal would have the effect of affirming the judgment or order passed by the High Court. It is thus evident that so long as that order (of dismissal) stands the High Court would be functus officio and it could not revise or alter its judgment or purport to exercise all its inherent power.

The answer may be looked a little another point of view. Supposing that the High Court possessed an inherent power of review, then it may either revoke its judgments or confirm it. In either case, the aggrieved party would have, we imagine, a right to move the Supreme Court again by means of a petition for special leave to appeal from this order of the High Court. The question then arises whether the order of the Supreme Court dismissing the petition of the aggrieved persons for special leave to appeal would stand in the way of a fresh petition for special leave to appeal to the Supreme Court. We think that if it is held that the order made by the Supreme Court under Article 134 is a final order, then a second petition for special leave to appeal in the same case would not lie to the Supreme Court. This would be so because there is no provision in the Constitution empowering the Supreme Court to permit the parties to a case to file a second petition for special leave to appeal in the same matter. The logical conclusion that flows from the above discussion is that once the Supreme Court has dismissed a petition for special leave to appeal in a criminal case the High Court ceases to have jurisdiction over that matter and has no power to entertain a review application which would have the effect of disturbing the order made by the Supreme Court.

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HON. MR. JUSTICE  
JAYARAJA  
JUDICIAL  
COMMISSIONER,  
MADRAS.

This becomes apparent from the fact that under Article 131, the Supreme Court has been invested with an express power to review any judgments pronounced or made by it, while no such power has been conferred on the High Court under section 149 A Criminal Procedure Code. The power of review which is possessed by the Supreme Court is well and confirmed. Order XLV, rule 3, of the Supreme Court Rules provides that 'nothing in these Rules shall be deemed to limit



341-A can come into operation, subject further to the requirement that the exercise of such powers must serve either of the three purposes mentioned in the said section.<sup>1</sup>

1961  
Crim.  
Proced.  
Code  
s. 341-A  
Section 341-A

It would thus appear that the inherent power of the High Court under section 341-A cannot be exercised where another remedy is available, and further that the power so exercised cannot be made to over-ride express provisions of law.

Section 341-A does not remove the High Court with the power to review its judgments, which has been asserted as being inherent in the position and in accordance with law. Section 341-A, Criminal Procedure Code vests the inherent powers of the High Court in Criminal matters just in the same way as section 151, C. P. C. vests the inherent powers of the High Court in civil matters.

A comparison between the provisions of section 341-A, Criminal Procedure Code and those of sections 151, Civil Procedure Code will bring out the scope and content of the inherent powers possessed by the High Court in respect of its criminal and civil jurisdictions respectively. Section 341-A, Criminal Procedure Code runs thus—

"Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to provide about the process of any court, or otherwise to secure the ends of justice."

Section 151, Civil Procedure Code is in these terms—

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the

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REPORTS  
[1969]

ends of justice or to preserve those of the peace of the court.

The two sections are drafted in identical terms and have the same purpose in view. The Legislature incorporated section 941 A in the Criminal Procedure Code in 1925. It was noted that a similar provision existed in the Civil Procedure Code as regard to the inherent powers of the High Court in Civil matters and, must therefore, be deemed to have clearly understood the scope and nature of the inherent powers which could be exercised by the High Court under section 941 A, Criminal Procedure Code. The Legislature has repeatedly provided for review of judgment in the Civil Procedure Code but no such provision finds place in the Criminal Procedure Code. This clearly goes to show that the inherent powers which were preserved to the High Court under section 941 A, Criminal Procedure Code did not include power to review its judgment on grounds analogous to Order XLVII, rule 1, C. P. C. We have, therefore, no doubt in our minds that High Court does not possess an inherent power to review its judgment on the ground of discovery of new matter or evidence.

It was now contended that section 466, Criminal Procedure Code did not in terms apply to the appellate judgments of the High Court and, therefore, the High Court could in appropriate cases, order or review its judgments. It is true that section 466 has no application to the judgments or orders rendered by the High Court as an appellate court. The finality of judgments or orders passed on appeal to the High Court is the subject of section 446, Criminal Procedure Code which provides that judgments and orders passed by an appellate court upon appeal shall be final, except as the case provided for in section 447 and Chapter XXXII, that is to say, except in the case of an appeal by the State



Consequently, against an order of appeal, or in the case in which the court exercises its powers of reference or remand.

As we have concerned with the review of an appellate order of the High Court and, therefore, section 226 Criminal Procedure Code will apply in full force. It has already been pointed out that there is no provision in the Criminal Procedure Code empowering the High Court to review its appellate judgment or order. Section 361-A cannot, therefore, over-ride an express provision of the Code by creating a new chapter of independent jurisdiction. In our view section 361-A cannot be invoked so as to make justice done, for if the High Court was allowed to open its final judgment or order this would spell the end of justice. It would mean that no finality was to be attached to an appellate order of the High Court, with the result that it would be open to a party to appeal as and when it suited him. It would be shocking if no finality were to be attached to the appellate judgments of the High Court which have been reached after full consideration of the merits of the case. It is a proposition to which no part of the *1973* subscribes.

Strong reliance was placed by the learned counsel on the Full Bench case of *Ray Bikram v. State* (7). Certain observations made by Datta, J. in that case were cited before us and it was contended that the High Court had power in appropriate cases to review its appellate judgments. We may point out at the very outset that the observations made in *Ray Bikram's* case (i) have no bearing on the present one because there the question before them Lordships was whether the High Court had power to review its earlier decision as a criminal revision and to rectify the same. It is sufficient to point out that under section 430 Criminal Procedure Code an incorporation has been made with respect to orders made in re-

1973  
Criminal  
Procedure  
Code  
s. 361-A  
Crim. P.  
C.

1961  
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orders, and revisions by the High Court, and it is stated therein that no finding is to be attached to such orders. It was on this finding that the Full Bench in *My Niece's case* (3) came to the conclusion that in exercise of its reserved jurisdiction it had the power to reverse an earlier order under section 561-A Criminal Procedure Code. The observations in that case, have therefore to be read in the context of the facts of that case.

It was clearly pointed out by Datta, J. that section 561-A did not confer an inherent power on the High Court to revise orders made in appeals. Datta, J. while reviewing cases dealing with inherent jurisdiction of the High Court under section 561-A, observed at page 823—

"In those cases the order of the High Court sought to be reviewed had been passed on merits and they were sought to be reviewed on the ground that the conditions laid down by the court earlier was wrong. Such a rehearing of the appeal or revision is hardly a matter for the exercise of inherent jurisdiction of the court in the interests of justice. It is well-nigh impossible to satisfy an unsuccessful party that an order of the court is a correct one. The interests of justice, therefore, require that such applications for review be not entertained."

It was held that where a matter has been fully heard and the decision has been arrived at on merits, no application for review shall be entertained even in the case of a reversal or rehearing.

The question as to the power of the High Court to review its appellate judgments under section 561-A Criminal Procedure Code came for consideration before

the Supreme Court in O. J. S. Chapter V, *State of Him.* has (3). At page 648 of this judgment it was stated thus:—

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Even while exercising its revisional powers under section 439 the High Court exercises any of the powers conferred on a court of appeal by sections 424, 426, 427 and 428 and it is in effect an increase of the appellate jurisdiction, though increased in the manner indicated therein. The principle of finality of criminal judgments, therefore, would equally apply when the High Court is exercising its revisional jurisdiction. Once such a judgment has been pronounced by the High Court, either as exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgment, and there is no provision in the Criminal Procedure Code which would enable even the High Court to review the same or to exercise revisional jurisdiction over the same.

Again referring to the question of the finality of the appellate judgments of the High Court, their Lordships stated in page 648 thus:

“Once, therefore, the judgment of the High Court replaces that of the lower court there is no question which can ever arise of the exercise by the High Court of its revisional powers under section 439(1) of the Criminal Procedure Code and the proper procedure, therefore, if the High Court thought it to be in the interests of justice to call for the record of the interested party, to issue notice of enhancement of sentence, is to raise the said notice before the hearing of the appeal is concluded and the judgment of the High Court in appeal is pronounced.”



it, inherent power to review its appellate judgment by admitting fresh evidence and allowing the accused to introduce fresh material in the case. One also no doubt conceives of cases where the High Court may exercise its inherent jurisdiction to make consequential amendments in its order, for example to correct a clerical mistake in its judgment; to refuse an appeal where it has been disposed of without affording an opportunity to the appellant or his counsel to be heard; where there has been no hearing in attendance with him or where upon the face of it the judgment does not clearly express the intention of the court. Instances like these stand on an entirely different footing because in such cases the court is not exercising its power of review. There the inherent power of the court is being exercised to further the ends of justice and the court is not called upon to re-examine the evidence or to introduce fresh material in the record for the purpose of deciding the matter.

We, therefore, hold that these applications are not maintainable and they are accordingly dismissed.

The order passed by this Court staying execution of the sentence of death of Sufian Singh applicant is vacated.

*Application dismissed.*

## CRIMINAL REVISION

*Before Mr. Justice Gargal and Mr. Justice Ramchandra*

**KHALIL AHMAD**

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**B.**

## STATE

**Question of citizenship—It can be decided by the Central Government or the local courts—Held in the light of cl. (a) of sub. III of the Citizenship Rules of 1955—if a person who does not obtain a passport and stays in India beyond the date mentioned in the exit certificate s. 14 of the Passport Act, 1948.**

The revision petition has been filed by Khalil Ahmad against his conviction and sentence under s. 14 of the Passport Act, 1948, and his statement was that he was not a foreigner within the meaning of the Passport Act, and that he was an Indian citizen at the time when he went to Pakistan against the meaning of Art. 5 of the Constitution of India. Questions arising in the case were referred to the Division Bench which after considering them is dead.

**Held,** (i) that the question of citizenship can only be decided by the Central Government in accordance with s. 10 of the Passport Act and in there was no finding of the Central Government in the present case that the applicant was not a citizen of India, he could not be prosecuted and convicted under s. 14 of the Passport Act.

(ii) that the rule of evidence framed in cl. (a) of Schedule III of the Citizenship Rules, 1955 the violation of Art. 19 of the Constitution of India and the Central Government has power to determine the question of citizenship is inconsistent with these rules.

(iii) that if a foreigner does not obtain a passport as required in para 7 of the Passport Rules, 1955 he renders himself liable under s. 14 of the Passport Act.

Case law discussed.

Criminal Revision no. 105 of 1960, from an order of R. CHANDRA, Sessions Judge, Bareilly, dated 2nd June, 1959



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submitted under section 14 of the Foreigners Act. His petition on appeal from his conviction and sentence by the Sessions Judge of Bareilly which was dismissed. Thereupon he moved this Court by means of a revision application and contended that he was not a foreigner within the meaning of the Foreigners Act. His case was that he was an Indian citizen at the time when he went to Pakistan within the meaning of Article 3 of the Constitution.

In order to appreciate the arguments of the learned counsel it is necessary to set out the various provisions of the Constitution bearing on this matter.

Article 3 defines the persons who constitute citizens of India at the commencement of the Constitution. Article 5 is in these terms:

"At the commencement of this Constitution every person who has his domicile in the territory of India, and

(a) who was born in the territory of India, or

(b) either of whose parents was born in the territory of India, or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement shall be a citizen of India.

Article 7 says that if a person had gone from the territory of India to the territory now included in Pakistan after 1st March, 1947, with the intention of residing in India or Pakistan, he would lose his citizenship of India which might have accrued to him by reason of Article 3 of the Constitution. Thus Articles 4 and 5 have to be read together. Article 7 is really in the



nature of a person to Article 3. Article 3 is of some importance and reads thus—

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No person shall be a citizen of India by virtue of Article 3, or be deemed to be a citizen of India by virtue of Article 3 or Article 4, if he has voluntarily acquired the citizenship of any foreign State.

Article 11 is as follows:

Nothing in the foregoing provisions of this Part (Part II) shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

It would appear that the purport of Article 3 is that if a person has voluntarily acquired the citizenship of any Foreign State he would not be considered or deemed to be a citizen of India by birth or by reason of domicile. Article 3 refers to the voluntary acquisition of the citizenship of any foreign State before the commencement of the Constitution and not after the coming into force of the Constitution. In other words, a person of Indian domicile would be deemed to be a foreigner if he has acquired the citizenship of a foreign State before the 26th January, 1950, the date of the commencement of the Constitution.

We are here concerned with a case where the applicant is said to have acquired citizenship of a foreign State subsequent to the coming into force of the Constitution and the question immediately arises whether a person who was a citizen of India on the 26th January, 1950, would cease to be so if he has subsequently voluntarily acquired citizenship of a foreign State.

In order to resolve this question we have to examine the scope and tenor of Article 11 of the Constitution

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which are not notwithstanding the provisions of Articles 1 and 2 of the Constitution, the Parliament shall have the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. Entry 17 of List I of Schedule VII empowers the Parliament to make laws relating to citizenship, naturalisation and aliens. The contents of entry 17 have to be read in the light of the power conferred by Article 11. It was in pursuance of this power that the Parliament enacted the Citizenship Act (no 51 of 1939). Sections 1 to 7 of this Act make provision for the acquisition of citizenship by various modes, namely, citizenship by birth, citizenship by descent, citizenship by registration, citizenship by naturalisation and citizenship by incorporation of territory. Section 8 of the Citizenship Act provides for the mode of termination of citizenship by an Indian citizen. Section 9 provides as to the circumstances which may result in the termination of citizenship. Section 10 is in these terms—

“(1) Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between the 15th January, 1930 and the commencement of this Act, voluntarily acquired, the citizenship of another country, shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India.

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, unless the Central Government otherwise directs.

(2) If any question arises as to where, when or how any person has acquired citizenship of another country, it shall be determined by such authority,

in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf."

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Section 18 of the Citizenship Act gives power to the Central Government to make rules to carry out the purposes of the Act. Clause (3) of subsection (1) of section 18 says such rules may provide for the authority to determine the question of acquisition of citizenship of another country; the procedure to be followed by such authority and rules of evidence relating to such cases. The Central Government has framed rule 38 of the Citizenship Rules of 1955 specifying the authority to determine the question as to where, when or how any person has acquired the citizenship of another country. Rule 38 says—

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38. (1) If any question arises as to where, when or how a person has acquired the citizenship of another country, the authority to determine such question shall, for purposes of section 9(1), be the Central Government.

(2) The Central Government shall, in determining any such question, have due regard to the rules of evidence specified in Schedule III."

Now a person who is citizen of a particular country may abandon that citizenship and acquire the citizenship of another country. In that event a question may arise whether he has relinquished the citizenship of his country of domicile. It is obvious that this matter will need to be decided on the basis of some rules of evidence and by such authority as may be prescribed for the purpose. It was to provide for a situation of this character that clause 3 of Schedule III of the Citizenship Rules was framed by the Central Government under the rule-making power conferred on it by section 18, read with rule 38 of the Citizenship Rules.

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The learned counsel argued that clause 1 of Schedule III framed under rule 50 of the Citizenship Act, was arbitrary and constituted unreasonable abridgment of the [unfettered] rights of a citizen. Clause 5 of Schedule III reads—

"The fact that a citizen of India has obtained on any date a passport from the Government of any other country shall be conclusive proof of his having voluntarily acquired citizenship of that country before that date."

Under section 5(2) of the Citizenship Act when any dispute arises as to whether a person has acquired citizenship of another country, it shall be determined by such authority, in such manner and having regard to such rules of evidence, as may be prescribed in this behalf. Rule 50 states that the Central Government shall be the authority to determine such questions for purposes of section 5(2) of the Act. The rules of evidence which should guide the Central Government in arriving at the conclusion as to whether a person has or has not voluntarily acquired the citizenship of another country are laid down in Schedule III. Paragraph 1 of Schedule III reads—

"In determining whether a citizen of India has or has not voluntarily acquired citizenship of any other country, the Central Government may take the following circumstances into consideration, namely—

- (a) Whether the person has migrated to that country with the intention of making it his permanent home;
- (b) Whether he has so far taken up permanent residence in that country; and
- (c) Any other circumstances relevant to the purpose."

Paragraph 3 reads—

"Notwithstanding anything contained in paragraph 4 a citizen of India shall be deemed to have voluntarily acquired citizenship of Pakistan—

(a) if he has migrated to Pakistan with the intention of making it his permanent home; or

(b) if he has obtained any certificate of domicile for Pakistan or declared himself to be a citizen of Pakistan or of Pakistan domicile; or

(c) if he has applied for and obtained a right, title or interest in immovable property in Pakistan; or

(d) if he has obtained a temporary permit for entry into India from Pakistan."

The learned Advocate-General pointed out that the question of acquisition of citizenship of another country is a question of status and that Article 11 of the Constitution gave very wide powers to Parliament for making the law with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. The power thus given to Parliament was not controlled by any provision of the Constitution. Article 12 expressly provided that notwithstanding any provision in Part II of the Constitution the Parliament shall have the power to make law for the acquisition and termination of citizenship. It cannot, therefore, be in doubt that Parliament was competent to provide for the termination of citizenship by enacting section 5 of the Citizenship Act. As we have mentioned earlier, item 11 of List I of Schedule VIII enhances the power conferred on the Parliament to make law relating to citizenship, naturalisation and aliens. It follows, therefore, that the Parliament is also competent to make

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rules of evidence for purposes of determining whether a person has ceased to be an Indian citizen or not.

Schedule III of the Citizenship Rules lays down the rules of evidence in regard to this matter. If a person is not a citizen of India he cannot call in aid the provisions of Part III of the Constitution. Article 19 applies only to the class of Indian citizens and if a person's nationality is in dispute he cannot claim protection of the fundamental rights, for it would be a contradiction in terms to hold that a person though not a citizen of India is nevertheless entitled to all the privileges and rights available to an Indian citizen. If a question arises whether the person concerned has acquired the citizenship of another country, that question has got to be resolved with the assistance of the rules of evidence contained in clause 3 of Schedule III of the Citizenship Rules. We are clearly of opinion that Article 19 of the Constitution has no application to such a case. We are supported in this view by the Bombay High Court in *State v. Sharif Khan* (1) and *Daad Ali Aji v. Deputy Commissioner of Police* (2). We were referred to the case of *Shamji Ali Khan v. State of Uttar Pradesh* (3). In that case *Bhagwan, J.* held that clause 3 of Schedule III of the Citizenship Rules appears to give rise to arbitrary and unreasonable abridgment of the fundamental rights guaranteed to all Indian citizens and is, therefore, by virtue of Article 13(2) of the Constitution null and void. He relied on the view adopted by the Andhra Pradesh High Court in *Mahomed Khan v. Government of Andhra Pradesh* (4).

We may point out that the view expressed in the Andhra Pradesh High Court in *Mahomed Khan's* case (4) has been disowned both by the Madras, Rajasthan, Calcutta and Bombay High Courts, vide

(1) A.I.R. 1959 Bom. 128.  
(2) 1959 A.I.J. 562.

(3) A.I.R. 1959 Cal. 102.  
(4) A.I.R. 1957 A.P. 267.

*Mathewson v. State of Indiana* (1), *State v. Shand* (2), *Shand v. State of Michigan* (3) and *Davey v. State of Michigan* (4).

It seems to us that in *Shand v. State of Michigan* (3), *Indiana*, J. proceeded on the presumption that the person concerned was an Indian citizen and, as such, entitled to the protection guaranteed under Article 19 of the Constitution. It was admitted in that case that the person concerned was a minor when he was in Indiana and as such, had no legal capacity to acquire domicile different to that of his guardian. On that footing it could legitimately be held that he had not lost his Indian nationality. The case, therefore, cannot be of any help to the applicants in the present case and is clearly distinguishable.

It was next contended that under section 1(2), read with rule 50 of the Citizenship Rules the proper authority to determine the question as to the nationality of the applicants was the Central Government and that the applicants could not have proceeded without first obtaining the decision of the Central Government under section 1(2) of the Citizenship Act. In our view the objections raised by the applicants were unavailing.

Schedule III of the Citizenship Rules lays down rules of evidence which should guide the Central Government in determining the question whether a person has voluntarily acquired citizenship of another country. It may be safely assumed that the Government is in the best position to decide the matter as the question of citizenship is, broadly speaking, political in nature. Consequently the proposition of the applicant appears to us to be premature and unavailing. The Central Government have not yet made any decision as to his citizenship and he could not, therefore, be converted on the ground that he is a foreigner.

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It was further contended that the Government of India had not recognised the citizenship or nationality law of Pakistan as being in enactment in force in that country and that, therefore, the applicant could not be declared as a citizen of Pakistan. Reliance was sought to be placed on the terms 'citizen' and 'nationality law' as defined in section 2 of the Citizenship Act and it was said that he could not be held to be a citizen of Pakistan.

Clauses (b) and (c) of section 2(1) of the Citizenship Act are as follows:

"(b) 'Citizen' in relation to a country specified in the First Schedule means a person who under the citizenship or nationality law for the time being in force in that country is a citizen or national of that country;

"(c) 'Citizenship' or 'Nationality law' in relation to a country specified in the First Schedule means an enactment of the legislature of that country which at the request of the Government of that country the Central Government may, by notification in the official Gazette have declared to be an enactment making provision for the citizenship or nationality of that country."

It was pointed out that the Central Government had not issued any notification in the official Gazette declaring the Pakistan Citizenship Act, 1951, to be an enactment making provision for the citizenship or nationality of Pakistan and that, therefore, the applicant could not be said to have voluntarily acquired the citizenship of Pakistan.

There is an obvious fallacy in the argument. The definition of 'citizen' or "citizenship" or nationality law given in section 2(b) and (c) of the Citizenship Act, is for the purpose of placing a restriction on the



foreigner who wants to get himself registered as an Indian citizen. This is made clear by the proviso added to section 5 of the Citizenship Act which runs as follows:

“AND  
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“5. (1) Subject to the provisions of this section and such conditions and restrictions as may be prescribed, the prescribed authority, may, on application made in this behalf, register as a citizen of India any person who is not already such citizen by virtue of the Constitution or by virtue of any of the other provisions of this Act, and belongs to one of the following categories—

- (a) —————
- (b) —————
- (c) —————
- (d) —————

(e) Persons of full age and capacity who are citizens of a country specified in the First Schedule.

Provided that in prescribing the conditions and restrictions subject to which persons of any such country may be registered as citizens of India under this clause, the Central Government shall have due regard to the conditions subject to which citizens of India, may be law or practice of that country become citizens of that country by registration.”

The First Schedule has been framed for the purpose of section 5(1) (e) of the Citizenship Act and it is in this context, that clauses (b) and (c) of section 2 have to be interpreted. The proviso to section 1(1) of the Citizenship Act makes it abundantly clear that the intention of the legislature was that persons of a country mentioned in Schedule I would be qualified to be registered as citizens of India if there was a corresponding law in that country permitting citizens of India to become citizens

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It becomes necessary to examine the validity of the argument by reference to certain provisions of the Foreigners Act as amended from time to time. The word "foreigner" was defined in section 2(a) of the Foreigners Act (XXXI of 1946) as amended by Act XXXIII of 1947, as follows:

2(a).  
"foreigner"  
means  
a person  
who—

(i) is not a natural born British subject as defined in sub-sections (1) and (2) of section 1 of the British Naturalisation and Status of Aliens Act 1914, or

(ii) has not been granted a certificate of naturalisation as a British subject under any law for the time being in force in India, or

(iii) is not the holder or subject of an alienating title, or

(iv) is not a citizen of the Asian ruled areas—

Provided that any British subject, who under any law for the time being in force in India comes to be a British subject, shall be deemed to be a foreigner.

It is not in dispute that the applicant was born in India during British suzerainty and was, in such a natural born British subject. The definition of the word "foreigner" was amended by the Adaptation of Laws Order, 1950 when the Constitution of India came into operation and clauses (iii) and (iv) of the proviso of the original definition were deleted. In their place a new clause was added in the following effect:

"is not a citizen of India."

In spite of this amendment by the Adaptation of Laws Order natural born British subjects and persons holding certificates of naturalisation as British subjects under any law for the time being in force were not regarded as foreigners. The position was, however,

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fundamentally altered when in the year 1957 section 1(1) of the Foreigners Act, 1946, was amended by Act XI of 1957 and the word "foreigner" was defined as "a person who is not a citizen of India." This amendment came into force with effect from 15th November, 1957. It is thus clear that persons who before the date on which Act XI of 1957 came into force, were treated as natural born British subjects so clear that they were not foreigners were deemed to be foreigners unless it was proved that they were citizens of India.

It has not been challenged that the Parliament has plenary powers and could amend the law so as to declare a natural born British subject a foreigner if he was not a citizen of India. It would, therefore, follow that after the coming into force of the Foreigners Act (XI of 1957) a person who is not a citizen of India would be deemed to be a foreigner. It is said that the status of the applicant as a natural born British subject could not be affected by the Foreigners Amendment Act of 1957. The argument is wholly without substance. As from the 15th day of August, 1957, when two independent dominions of India and Pakistan were brought into existence by the Indian Independence Act, the sovereignty of the British Crown came to an end. Section 1(1) (a) of the Independence Act reads—

"His Majesty's Government in the United Kingdom have no responsibility as respects the Government of any of the territories which immediately before that date were included in British India."

Part (b) of subsection (2) of section 2 of that Act says that—

"nothing in this subsection shall be construed as continuing in force of an order after the appointed date any form of control by His Majesty's Government in the United Kingdom over the persons

of the new Dominions or any provinces or other parts thereof."

Thus India ceased to be a 'Dependency' of the British Empire by the passing of the Indian Independence Act, 1947, and all control by His Majesty's Government in the United Kingdom over the powers of the new dominions of India came to an end. It is well established that when a sovereign power cedes a territory by treaty or otherwise to another State the inhabitants of the ceded territory cannot retain the allegiance and nationality of their former ruler.

The case of *Empress v. Jaggiah* (1) illustrates the point made above. There a certain territory in which the applicant of that case resided was ceded to the Maharaja of Benares by the British Government. The applicant came to live in Benares in connection with his business. He contended that he was a 'natural born British subject' and, as such, was not a 'foreigner' under the Foreigners Act (III of 1946) as amended by Act III of 1945. This contention was repelled by the Bombay High Court and it was held that a relinquishment of the government of a territory was not only a relinquishment of the right in the soil or territory but also of the rights over the inhabitants of the same. It was held, *inter alia*—

"When a sovereign by treaty relinquishes his claim to the allegiance of the inhabitants of specified territories, it becomes a question of fact whether a particular individual remained after the cession an inhabitant of the specified territory and became thereby a citizen of the State into which it passed as an integral part. In no case has it been held that any inhabitants of the ceded or separated territory has the right to remain an inhabitant of it, and at the same time to retain the allegiance and nationality of the State which ceded or partitioned the territory."

[1] AIR 1952 Bom. 404.

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It is evident that when the British Crown relinquished the government of the territory of India and created two separate dominions, of India and Pakistan, persons residing in the respective Dominions ceased to retain the allegiance and nationality of the British Crown which had transferred all its rights over the territory of India to the said two Dominions. It follows therefore that the applicant could not claim to be a natural born British subject as from the 15th of August, 1947.

It was also contended that the Pakistan passport on the basis of which he entered India was not a document of title and, as such, could not affect his original status as an Indian citizen. It was said that the mere fact that the applicant had obtained a Pakistan passport should not be considered as evidence of his having voluntarily acquired citizenship of Pakistan. Now it seems to us clear that under the Pakistan Citizenship Act 1951, the Pakistan Government would not have issued a passport to the applicant unless they were satisfied that he was a Pakistan citizen. This aspect of the case is important because a citizen of India living in Pakistan, did not have obtain a Pakistani passport and a visa to enter India while a Pakistani national would have to do so. In this view of the matter the issue of a Pakistan passport would be presumptive evidence of the fact that the holder thereof owed allegiance to the Pakistan Government.

In *Joyce v. Director of Public Instruction* (1) an American citizen who had resided in British territory for a number of years applied for and obtained a British passport describing himself as a British subject by birth and stating that he required it for the purpose of holiday touring in Germany and other European countries. During the continuance of the passport issued to him the Second World War broke out and he helped the Nazi Government in delivering broadcast talks, as

English bonds in Court Room. He was pronounced and convicted of treason. It was contended on his behalf that he was an American citizen and, as such, the passport issued to him did not affect his status as an American citizen, and that he could not be prosecuted and convicted for treason on the footing that he was a British citizen. Lord Justice, the Lord Chancellor, repelled the contention and observed as follows.

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"The material fact is that he got the passport and I now examine that fact. The actual passport issued to the applicant has not been produced, but its contents have been duly proved. The terms of a passport are familiar. It is thus described by Lord ALDERMAN, C. J., in *R. v. Baddeley* (1):

"It is a document issued in the name of the sovereign on the responsibility of a Minister of the Crown to a named individual intended to be presented to the governments of foreign states and to be used for that individual's protection as a British subject in foreign countries."

By its terms it requests and requires in the name of His Majesty all those whom it may concern to allow the bearer to pass freely without let and hindrance and to afford him every assistance and protection of which he may stand in need."

The Lord Chancellor pointed out that—

"In these circumstances I am clearly of opinion that so long as he holds the passport—  
a) he is adherent to the King's enemies in the realm or elsewhere in staff or aid of treason. There is one other aspect of this part of the case with which I must deal. It is said that there is nothing to prevent us from withdrawing from his stage—

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since when he leaves the realm. I do not dissent from this as a general proposition. It is possible that he may do so even though he has obtained a passport. But that is a hypothetical case. Here there was no suggestion that the applicant had surrendered his passport or taken any other overt steps to withdraw from his allegiance.

The observations of the House of Lords quoted above fully apply to the present case. The applicant here had not surrendered his passport nor taken any overt step to withdraw from his allegiance to the Pakistan Government. If he was so minded he could have applied for being registered as an Indian citizen. He, however, chose to register in India on the basis of the Pakistani passport and so he was directly or indirectly indicated his intention to renounce his Pakistan citizenship. We are, therefore, of opinion that the applicant by obtaining a Pakistani passport had declared his allegiance to the Pakistan Government and could be considered as a foreigner.

Lastly, it was contended that paragraph 7 of the Foreigners Order made in pursuance of section 3 of the Foreigners Act was a piece of delegated legislation and was, therefore, invalid. It is said that the Parliament had delegated unbridled and unlimited power to the Central Government.

In order to appreciate this contention it is necessary to refer to section 3 of the Foreigners Act which says that the Central Government may by order make provision either generally or with respect to all foreigners or with respect to any particular foreigner, for prohibiting, regulating or restricting entry of foreigners into India, or their departure therefrom, or their presence or continued presence therein. In sub-section (2) of section 3 it is laid down that orders made



under this section may prohibit, enter also, that the foreigner shall not depart from India or shall depart only at such times and by such route and subject to the observance of such conditions of departure as may be prescribed, and further that he shall not remain in India or in any prohibited area therein, and shall comply with such conditions as may be prescribed or specified imposing any restrictions on his movement, etc. It would thus appear that the legislature has clearly specified the matters in respect of which orders may be made under this section by the Central Government. It cannot, therefore, be said that an unguided power has been conferred on the Central Government. It is only a piece of conditional legislation and, consequently the power conferred on the Central Government cannot be said to be in excess of section 3 of the Act.

Paragraph 7 of the Foreigners Order, 1948, stands as follows:

**Restrictions on foreigners in India—**

"Every foreigner who enters India on the authority of a visa issued on passport of the Indian Passports Act, 1920 (XXCV of 1920) shall obtain from the Registration Officer having jurisdiction either at the place at which the said foreigner enters India, or if he enters India otherwise than on the authority of transit visa or passport as defined in the Registration of Foreigners Act, 1939, at the place in which he resides in India a permit indicating the period during which he is authorized to remain in India, and shall, unless the period stated in the permit is extended by the Central Government, depart from India before the expiry of the said period."

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Section 14 of the Foreigners Act provides, that persons contravening the provisions of the Act or of any order made thereunder or any direction given in pursuance of the Act or such Order, would be liable to be punished with imprisonment for a term which may extend to five years. Paragraph 7 of the Foreigners Order has been made to regulate and restrict the movements of foreigners entering in India, in the interest of the security of the State and also to safeguard the personal safety of the foreigners concerned. We find no fault in the contention that paragraph 7 of the Foreigners Order is valid.

It was also suggested that Rule 6 of the Regulations of Foreigners Rules, 1959 does not provide for obtaining a permit by a foreigner from the Registration Officer. Section 2(9) of the Regulations of Foreigners Rules, 1959, defines "conditions of registration" as meaning a condition of registration issued in pursuance of rule 6. Clause (g) of that section defines "Registration Officer" as meaning a Registration Officer appointed by the Central Government under rule 1.

Rule 4(1)(a) of the Regulations of Foreigners Rules, 1959, says that a registration report shall be presented by a foreigner who is present in India on the date on which these rules come into force, within fifteen days of the said date, to the Registration Officer of the district in which his address in India is situated, and if on the said date and for a period of fourteen days thereafter, the foreigner is absent from that district, to the Registration Officer of the district in which the foreigner is for the time being present. Sub-rule (2) of rule 3 says that every foreigner presenting a registration report shall furnish to the Registration Officer such information as may be in his possession for the purpose of satisfying the said officer as to the accuracy of the particulars specified therein and shall, on being required so to do, sign the registration report in the presence of

the said officer and shall thereupon be entitled to receive from the said officer a certificate of registration in Part III of Form A, or Part III of Form D, as the case may be.

The certificate of registration issued to a foreigner in Part III of Form A requires that when he is about to depart from India he shall produce his certificate of registration before the Registration Officer of the district in which his registered address is situated, and obtain from him an endorsement to the effect that the departure report has been made, and also surrender his certificate as endorsed to the Registration Officer of the place from which he proposes to leave India.

Rule 3 of the Registration of Foreigners Rules makes it incumbent on every foreigner entering India to present to persons at the appropriate Registration Office prescribed by rule 4 a Registration Report of his arrival or presence, as the case may be, in India.

The foregoing provisions of the registration of Foreigners Rules, leave no room for doubt that, under the Registration of Foreigners Act and the rules framed thereunder, a foreigner is required to inform the Registration Officer of his presence in India and obtain a certificate of registration from that officer, in accordance with rule 4. He is further required to surrender his certificate of registration immediately before his departure from India in accordance with rule 18 and obtain an endorsement from the Registration Officer to that effect. The purpose for which the certificate of registration is issued in respect of a foreigner is to regulate his movements, within the district in which the registration certificate was granted, and also to restrict his stay within the period specified in the visa issued to him.

It is clear that there is no specific rule for obtaining a "passport" by a foreigner from the Registration Officer, but it may be implied from the fact that every foreigner

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